

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 ) CR-18-00258-EJD  
 PLAINTIFF, )  
 ) SAN JOSE, CALIFORNIA  
 VS. )  
 ) JUNE 23, 2022  
 RAMESH "SUNNY" BALWANI, )  
 ) VOLUME 40  
 DEFENDANT. )  
 ) PAGES 7400 - 7556

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN C. BOSTIC  
JEFFREY B. SCHENK  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113  
  
BY: ROBERT S. LEACH  
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1301 CLAY STREET, SUITE 340S  
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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8                                        BY: JEFFREY COOPERSMITH  
9                                        AARON BRECHER  
10                                        AMANDA MCDOWELL  
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22                                        ORRICK, HERRINGTON & SUTCLIFFE  
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   UNITED STATES FOOD & DRUG  
   ADMINISTRATION  
   BY: GEORGE SCAVDIS

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INDEX OF PROCEEDINGS

DEFENDANT'S CLOSING ARGUMENT BY MR. COOPERSMITH P.7411

1 SAN JOSE, CALIFORNIA

JUNE 23, 2022

12:04PM 2 P R O C E E D I N G S

12:04PM 3 (COURT CONVENED AT 12:04 P.M.)

12:04PM 4 (JURY OUT AT 12:04 P.M.)

12:04PM 5 THE COURT: LET'S GO ON THE RECORD IN THE BALWANI  
12:04PM 6 CASE.

12:04PM 7 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

12:05PM 8 WE ARE OUTSIDE OF THE PRESENCE OF OUR JURY. I JUST WANTED  
12:05PM 9 TO TALK WITH COUNSEL A LITTLE BIT ABOUT SCHEDULING, PLEASE, AND  
12:05PM 10 WHERE WE'RE AT.

12:05PM 11 MAYBE COUNSEL CAN COME TO THE LECTERN.

12:05PM 12 MR. COOPERSMITH, YOU'RE IN YOUR ARGUMENT. I'M JUST  
12:05PM 13 CURIOUS IF YOU'RE ABLE TO TELL ME YOUR THOUGHTS ABOUT  
12:05PM 14 SCHEDULING.

12:05PM 15 MY NOTES REFLECT THAT YOU'VE ARGUED 7 HOURS AND  
12:05PM 16 45 MINUTES, AND I JUST WANT TO FOLLOW UP WITH ANY SCHEDULE THAT  
12:05PM 17 YOU MIGHT HAVE TO OFFER.

12:05PM 18 MR. COOPERSMITH: YES, YOUR HONOR, I CAN DO THAT.

12:05PM 19 SO I EXPECT TO FINISH MY ARGUMENTS TODAY.

12:05PM 20 THE COURT: OKAY.

12:05PM 21 MR. COOPERSMITH: I THINK THAT THE COURT SAID  
12:05PM 22 YESTERDAY WE MIGHT HAVE UNTIL AS LATE AS 5:00 O'CLOCK TODAY.

12:05PM 23 THE COURT: I THINK I ASKED THE JURORS THAT, AND  
12:05PM 24 HOPEFULLY WE'LL HAVE THAT AVAILABLE TO US.

12:05PM 25 MR. COOPERSMITH: RIGHT. AND I MAY NOT NEED ALL OF

12:05PM 1 THAT TIME, BUT I'M GOING TO TRY VERY HARD TO FINISH THE  
12:06PM 2 ARGUMENTS TODAY.

12:06PM 3 AND IT COULD BE THERE'S A LITTLE TIME FOR THE GOVERNMENT'S  
12:06PM 4 REBUTTAL, OR MAYBE NOT, JUST DEPENDING ON HOW WAS IT GOES.

12:06PM 5 THE COURT: AND BY ASKING THAT, I'M NOT SUGGESTING  
12:06PM 6 IN ANY WAY, TO SUGGEST TO YOU IN ANY WAY WHAT YOUR SCHEDULE  
12:06PM 7 SHOULD BE. I'M TRYING TO INFORM MYSELF AS TO SCHEDULING.

12:06PM 8 MR. COOPERSMITH: I DON'T TAKE IT THAT WAY,  
12:06PM 9 YOUR HONOR.

12:06PM 10 THE COURT: RIGHT.

12:06PM 11 MR. BOSTIC.

12:06PM 12 MR. BOSTIC: THANK YOU, YOUR HONOR. FOR THE  
12:06PM 13 GOVERNMENT'S REBUTTAL, OBVIOUSLY WE NEED TO SEE WHAT ELSE IS  
12:06PM 14 COVERED IN THE DEFENSE'S CLOSING, BUT MY GOAL IS TO MAKE THAT  
12:06PM 15 SIGNIFICANTLY LESS THAN HALF A DAY, SO I WOULD HOPE THAT THAT  
12:06PM 16 CAN BE DONE IN TWO HOURS OR SO.

12:06PM 17 THE COURT: OKAY.

12:06PM 18 MR. BOSTIC: IF THE DEFENSE'S CLOSING TAKES THE VAST  
12:06PM 19 MAJORITY OF THIS AFTERNOON, I MIGHT ASK THE COURT WHETHER WE  
12:06PM 20 CAN BEGIN AND END THE REBUTTAL TOMORROW MORNING RATHER THAN  
12:06PM 21 STARTING IT TODAY, BUT WE'LL SEE HOW IT GOES.

12:06PM 22 THE COURT: SURE. THANK YOU FOR THAT. THAT'S  
12:06PM 23 HELPFUL.

12:06PM 24 THE OTHER QUESTION I HAD IS WE HAVE A JUROR WHO HAS -- WE  
12:07PM 25 KNOW FROM HER RESPONSE IS UNAVAILABLE JULY 26TH, I THINK,

12:07PM 1 THROUGH -- EXCUSE ME, JUNE 26TH THROUGH JULY 5TH, I BELIEVE. I  
12:07PM 2 THINK SHE'S AVAILABLE JULY 5TH.

12:07PM 3 AND SHOULD THE JURY GET THE CASE TOMORROW -- SHE'S STILL  
12:07PM 4 PART OF THE JURY NOW. SHOULD THE JURY GET THE CASE TOMORROW,  
12:07PM 5 MY THOUGHTS ARE THAT WE SHOULD SEE WHAT THEY DO WITH THE CASE  
12:07PM 6 AND THEN DECIDE ON A PROTOCOL AS TO WHAT TO DO WITH THIS JUROR.  
12:07PM 7 I BELIEVE IT'S JUROR NUMBER 10.

12:07PM 8 MR. COOPERSMITH: YOUR HONOR, I HAD A THOUGHT ABOUT  
12:07PM 9 THAT THAT I WOULD LIKE TO SUGGEST TO THE COURT. AND I DID HAVE  
12:07PM 10 A BRIEF CONVERSATION WITH MR. SCHENK AND MS. ROBINSON EARLIER  
12:07PM 11 ABOUT THIS.

12:07PM 12 I'M NOT REPRESENTING THAT I'VE RESEARCHED THIS, BUT I JUST  
12:07PM 13 WANTED TO THROW THIS OUT, THAT JUROR NUMBER 10 I THINK IT IS,  
12:07PM 14 SINCE SHE IS GOING ON A VACATION I BELIEVE ON THE 26TH, SHE  
12:08PM 15 WILL HAVE HEARD ALL OF THE CASE, AND INCLUDING ALL OF THE  
12:08PM 16 ARGUMENTS, RIGHT? AND THE INSTRUCTIONS OF THE COURT.

12:08PM 17 AND THEN IT SEEMS LIKE SHE'S LEAVING ON SUNDAY, THE JURY  
12:08PM 18 MIGHT HAVE A LITTLE TIME TO DELIBERATE TOMORROW.

12:08PM 19 BUT ASSUMING THE JURY DOESN'T REACH A VERDICT TOMORROW,  
12:08PM 20 THEN SHE WOULD NOT BE ABLE TO PARTICIPATE IN THE DELIBERATIONS  
12:08PM 21 PRESUMABLY MONDAY, RIGHT? SO SHE WOULD BE THEN RELEASED AS A  
12:08PM 22 JUROR.

12:08PM 23 BUT MY SUGGESTION IS THAT, INSTEAD OF RELEASING HER  
12:08PM 24 ALTOGETHER, IS TO CONTINUE TO HAVE HER UNDER THE COURT'S  
12:08PM 25 ADMONITION ABOUT LOOKING AT THE PRESS AND SO FORTH, AND THEN

12:08PM 1 HAVING HER BASICALLY SWITCHED FROM A SEATED JUROR TO AN  
12:08PM 2 ALTERNATE.

12:08PM 3 THE ONLY REASON I SUGGEST THAT IS BECAUSE I THINK THERE  
12:08PM 4 MAY BE SOME OTHER DAYS WHERE ONE OR MORE JURORS AREN'T  
12:08PM 5 AVAILABLE FOR THE END OF NEXT WEEK, AND IF THERE'S NO VERDICT  
12:08PM 6 BY, SAY, THE 29TH, AND THERE MAY OR MAY NOT BE, THEN WE WOULD  
12:08PM 7 HAVE AN EXTRA ALTERNATE THAT COULD BE CALLED BACK. AND  
12:08PM 8 OBVIOUSLY THE JURY IN THAT SITUATION HAS TO START DELIBERATIONS  
12:09PM 9 ANEW.

12:09PM 10 BUT THAT WOULD GIVE US A LITTLE -- AN EXTRA SAFETY VALVE  
12:09PM 11 IN CASE COVID OR WHATEVER HAPPENS, WE COULD HAVE ANOTHER JUROR  
12:09PM 12 THAT COULD COME BACK WHEN SHE FINISHES WITH HER VACATION, WHICH  
12:09PM 13 MIGHT BE THE 5TH OR 6TH.

12:09PM 14 SO JUST THROWING IT OUT. AGAIN, MR. SCHENK AND I CHATTED  
12:09PM 15 AND I DON'T THINK EITHER OF US ARE SURE THAT THAT'S POSSIBLE.  
12:09PM 16 LIKE I DON'T HAVE ANY PRECEDENT TO CITE. BUT I THINK IT'S  
12:09PM 17 SOMETHING THAT I WANTED TO THROW OUT.

12:09PM 18 THE COURT: SURE. I THINK TO YOUR POINT, I BELIEVE  
12:09PM 19 THAT WE HAVE INFORMATION THAT ANOTHER JUROR HAS INDICATED  
12:09PM 20 TRAVEL PLANS FOR THE 30TH AND THEN RETURNING THE 5TH, I  
12:09PM 21 BELIEVE. I THINK IT'S THAT LONG WEEKEND.

12:09PM 22 THE CLERK: SHE'S RETURNING THE 4TH, BUT WE DO HAVE  
12:09PM 23 ANOTHER JUROR OUT ON THE 5TH.

12:09PM 24 THE COURT: I'M SORRY.

12:09PM 25 THE CLERK: WE HAVE A THIRD JUROR OUT ON THE 5TH FOR

12:09PM 1 THE LONG WEEKEND.

12:09PM 2 THE COURT: I SEE.

12:09PM 3 THE CLERK: AS WELL AS THAT ONE WHO DEPARTS.

12:09PM 4 THE COURT: SO WE MIGHT LOSE A JUROR ON THE 5TH,

12:09PM 5 POTENTIALLY TWO.

12:09PM 6 MR. SCHENK.

12:09PM 7 MR. SCHENK: THANK YOU, YOUR HONOR. A FEW THOUGHTS

12:09PM 8 ON THAT.

12:09PM 9 FIRST, I THINK THAT'S CORRECT. MY UNDERSTANDING IS THAT

12:09PM 10 THE JURY COULD DELIBERATE WHEN THEY GET THE CASE TOMORROW,

12:10PM 11 FRIDAY, AND THEN MONDAY THROUGH THURSDAY, AND WE WOULD LOSE OUR

12:10PM 12 FIRST DELIBERATING JUROR ON THURSDAY.

12:10PM 13 AND THEN I BELIEVE THEY'RE UNABLE TO DELIBERATE THE ENTIRE

12:10PM 14 WEEK OF THE 4TH BECAUSE OF VARIOUS TRAVEL ISSUES. I THINK ONE

12:10PM 15 OF THE JURORS IS OUT FROM THE 30TH TO THE 4TH OR 5TH, AND THEN

12:10PM 16 MY NOTES REFLECT A DIFFERENT JUROR OUT THROUGH THE 8TH. MAYBE

12:10PM 17 I'M WRONG ABOUT THAT. I THOUGHT THERE WAS ANOTHER JUROR WHO

12:10PM 18 HAD TRAVEL.

12:10PM 19 THE COURT: I DON'T THINK SO. AND I SHOULD GET MY

12:10PM 20 GREEN SHEET OFF MY DESK.

12:10PM 21 THE CLERK: YOUR HONOR, THAT JUROR --

12:10PM 22 THE COURT: LET ME LOOK AT THE SHEET.

12:10PM 23 (PAUSE IN PROCEEDINGS.)

12:10PM 24 THE COURT: I SHOW ONE JUROR, 5, UNAVAILABLE JULY 5,

12:11PM 25 AND THE REST MY BOXES ARE GREEN, IF YOU WILL.



12:11PM 1 MR. COOPERSMITH: I THINK THERE'S SOME NOTATION ON  
12:11PM 2 THE BOTTOM WHERE JURORS ARE UNAVAILABLE ON THE 30TH OF JUNE AND  
12:11PM 3 THEN JULY 1ST. SO THOSE TWO DAYS NEXT WEEK IT LOOKS LIKE ONE  
12:11PM 4 OR MORE JURORS IS NOT AVAILABLE.

12:11PM 5 THE COURT: YES. JUROR NUMBER 9 LOOKS LIKE  
12:11PM 6 UNAVAILABILITY FROM THE 4TH THROUGH THE 8TH.

12:11PM 7 BUT THERE'S AN INDICATION THAT THAT JUROR COULD BE HERE,  
12:11PM 8 IF NECESSARY. SO SHOULD IT BE NECESSARY, IT SOUNDS LIKE THAT  
12:11PM 9 JUROR IS WILLING TO CHANGE THAT JUROR'S PLANS.

12:11PM 10 MR. COOPERSMITH: RIGHT. THAT'S HELPFUL.

12:11PM 11 BUT I THINK IF I'M RIGHT, YOUR HONOR, THERE'S NO -- THE  
12:11PM 12 JURY WON'T BE ABLE TO DELIBERATE ON JUNE 30TH, AND THEY WILL  
12:11PM 13 NOT BE ABLE TO DELIBERATE ON JULY 1ST OR JULY 5TH.

12:11PM 14 SO THAT WHAT WOULD HAPPEN IS THAT THE JURY COULD  
12:11PM 15 DELIBERATE WHATEVER TIME TOMORROW, MONDAY AND TUESDAY OF NEXT  
12:12PM 16 WEEK, WHICH IS THE 27TH AND 28TH, AND THEN ALSO WEDNESDAY, THE  
12:12PM 17 29TH, BUT THEN IT WOULD GO DARK UNTIL JULY 6TH IS HOW I READ  
12:12PM 18 THAT CHART, ASSUMING THAT THE JUROR WHO IS UNAVAILABLE FROM THE  
12:12PM 19 4TH THROUGH 8TH IS WILLING TO STAY.

12:12PM 20 THE COURT: RIGHT.

12:12PM 21 MR. SCHENK: YES, YOUR HONOR. THAT'S WHAT I WAS  
12:12PM 22 REFERRING TO WITH REGARD TO JUROR NUMBER 9 AS POTENTIALLY  
12:12PM 23 HAVING SOME CONFLICTS THAT WEEK.

12:12PM 24 WE DO STILL HAVE DELIBERATION TIME TOMORROW AND THE FIRST  
12:12PM 25 PART OF THE WEEK NEXT WEEK.

12:12PM 1 I APPRECIATE THE SUGGESTION THAT MR. COOPERSMITH MADE. I  
12:12PM 2 SAID I WOULD LIKE TO SPEND A LITTLE TIME LOOKING INTO THIS  
12:12PM 3 ISSUE. I DON'T KNOW IF WE CAN.

12:12PM 4 THE COURT: I DON'T, EITHER. IT'S A CASE OF FIRST  
12:12PM 5 IMPRESSION FOR ME. I'VE NEVER HAD THAT HAPPEN, AND I EXPECT IT  
12:12PM 6 WOULD, IF IT WERE TO HAPPEN, AT A MINIMUM I WOULD WANT A  
12:13PM 7 STIPULATION FROM ALL PARTIES, INCLUDING THE DEFENSE, INDICATING  
12:13PM 8 THAT YOU'VE THOROUGHLY DISCUSSED THIS WITH YOUR CLIENT AND  
12:13PM 9 YOU'RE WILLING TO PROCEED IN THAT FASHION.

12:13PM 10 MR. COOPERSMITH: YES. THAT MAKES SENSE,  
12:13PM 11 YOUR HONOR. WE'LL DISCUSS THAT.

12:13PM 12 IN ADDITION, I THINK MAYBE MR. SCHENK AND I ARE BOTH GOING  
12:13PM 13 TO LOOK INTO THIS FOR TODAY OR TONIGHT, AND THEN WE SHOULD BE  
12:13PM 14 ABLE TO HAVE AN ANSWER FOR THE COURT.

12:13PM 15 THE COURT: SURE.

12:13PM 16 MR. COOPERSMITH: THERE MAY NOT BE ANY PRECEDENT.  
12:13PM 17 IT MAY TRULY BE A CASE OF FIRST IMPRESSION, BUT IF THERE'S  
12:13PM 18 ANYTHING YEA OR NAY, WE CAN TELL YOUR HONOR.

12:13PM 19 THE COURT: ALL RIGHT. WELL, THEN THANK YOU FOR THE  
12:13PM 20 DISCUSSION.

12:13PM 21 WE'LL HAVE TO MAKE A DECISION TOMORROW AS TO JUROR  
12:13PM 22 NUMBER 10, AND RIGHT NOW THAT JUROR IS A SITTING JUROR AND WILL  
12:13PM 23 CONTINUE TO SIT. THAT JUROR'S UNAVAILABILITY IS -- PRESUMABLY  
12:14PM 24 WOULD BEGIN AFTER 5:00 P.M. TOMORROW. SO WE'LL CERTAINLY HAVE  
12:14PM 25 SOME INFORMATION, AND DEPENDING ON A DECISION, WE CAN CALL THAT

12:14PM 1 JUROR OUT AND SPEAK WITH THAT PERSON INDIVIDUALLY AND GET MORE  
12:14PM 2 INFORMATION.

12:14PM 3 MR. COOPERSMITH: YES, YOUR HONOR.

12:14PM 4 MR. SCHENK: AGREED.

12:14PM 5 THE COURT: OKAY. THANK YOU. THANKS.

12:14PM 6 ANYTHING FURTHER THEN ABOUT SCHEDULING?

12:14PM 7 MR. SCHENK: NO, YOUR HONOR.

12:14PM 8 THE COURT: THANK YOU. THANKS FOR THE HELP ON THAT.

12:14PM 9 I APPRECIATE IT.

12:14PM 10 OKAY. WE CAN BRING THEM IN. I'M JUST GOING TO GET THAT  
12:14PM 11 SHEET.

12:14PM 12 (PAUSE IN PROCEEDINGS.)

12:19PM 13 (JURY IN AT 12:19 P.M.)

12:19PM 14 THE COURT: THANK YOU. YOU MAY BE SEATED. WE'RE  
12:19PM 15 BACK ON THE RECORD IN THE BALWANI MATTER.

12:19PM 16 OUR JURORS AND ALL COUNSEL ARE PRESENT. MR. BALWANI IS  
12:19PM 17 PRESENT.

12:19PM 18 BEFORE I ASK MR. COOPERSMITH TO CONTINUE WITH HIS  
12:19PM 19 ARGUMENT, LET ME ASK OUR JURY AND ALTERNATES, DURING OUR BREAK,  
12:19PM 20 HAVE ANY OF YOU HAD CAUSE TO LEARN, DISCUSS, READ, LISTEN TO,  
12:19PM 21 OR IN ANY WAY LEARN ANYTHING ABOUT THIS CASE?

12:19PM 22 IF SO, PLEASE RAISE YOUR HAND.

12:19PM 23 I SEE NO HANDS. THANK YOU AGAIN ON BEHALF OF COUNSEL AND  
12:19PM 24 THE COURT. THANK YOU FOR YOUR CONTINUED FIDELITY TO THE  
12:19PM 25 COURT'S ADMONITION. I APPRECIATE IT.

12:19PM 1 AND, MR. COOPERSMITH, IF YOU WOULD LIKE TO CONTINUE.

12:19PM 2 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:19PM 3 **(MR. COOPERSMITH RESUMED HIS CLOSING ARGUMENT ON BEHALF OF**  
12:19PM 4 **THE DEFENDANT.)**

12:19PM 5 MR. COOPERSMITH: GOOD AFTERNOON EVERYONE.

12:19PM 6 WE'RE GOING TO CONTINUE WITH THE CLOSING ARGUMENT TODAY,  
12:20PM 7 DAY THREE AS THEY SAY. I DO EXPECT TO BE FINISHED TODAY, SO  
12:20PM 8 HOPEFULLY I'LL BE ABLE TO DO THAT.

12:20PM 9 NOW, I JUST WANT TO ORIENT EVERYONE. WHEN WE LEFT OFF  
12:20PM 10 TODAY -- I'M SORRY, YESTERDAY, WE WERE TALKING ABOUT THE  
12:20PM 11 SPECIFIC THERANOS INVESTORS, AND I'M JUST SHOWING THE ROAD MAP  
12:20PM 12 SLIDE SO EVERYONE SEES WHERE WE ARE AT THIS POINT.

12:20PM 13 AND I TALKED ABOUT SOME OF THE INVESTORS, MR. LUCAS AND  
12:20PM 14 MR. TOLBERT, BUT WE WERE TALKING ABOUT MR. GROSSMAN. AND YOU  
12:20PM 15 ALL MIGHT REMEMBER, THIS IS THE GENTLEMAN WHO TESTIFIED WHO'S  
12:20PM 16 WITH A FIRM CALLED PFM, PARTNER FUND MANAGEMENT.

12:20PM 17 SO WHEN WE LEFT OFF YESTERDAY, I WAS TALKING ABOUT THE  
12:20PM 18 INTERNAL EMAILS WITHIN PFM THAT EXPLAINED THE RISKS THAT PFM  
12:20PM 19 WAS WELL AWARE OF GOING INTO THE INVESTMENT WITH THERANOS.

12:21PM 20 AND I WANT TO PICK UP WHERE WE LEFT OFF ON THAT. AND I'LL  
12:21PM 21 SHOW YOU THIS EXHIBIT, WHICH IS 4088. SO THIS IS AN EMAIL FROM  
12:21PM 22 BRIAN GROSSMAN TO ADAM CLAMMER, WHO IS A PERSON THAT  
12:21PM 23 MR. GROSSMAN HIRED TO ASSIST PFM WITH ITS INVESTMENT DECISION.  
12:21PM 24 AND THAT'S ON JANUARY 28TH, 2014. SO THAT'S BEFORE THE  
12:21PM 25 INVESTMENT.

12:21PM 1 AND MR. GROSSMAN SAYS, "LOT OF DEBATE INTERNALLY ON  
12:21PM 2 ACCURACY. I THINK IT IS BASICALLY TRUE, BUT NOT NECESSARILY  
12:21PM 3 EVERY TEST TODAY. I THINK WITHIN 6-12 MONTHS THEY WILL BE  
12:21PM 4 THERE."

12:21PM 5 LET'S JUST PAUSE THERE FOR A MINUTE. SO MR. GROSSMAN  
12:21PM 6 KNOWS FULL WELL THAT THERE'S NOT NECESSARILY PERFECTION OR EVEN  
12:21PM 7 CLOSE TO THAT ON EVERY THERANOS TEST, AND THAT THE PROJECTION  
12:21PM 8 OR THE HOPE IS THAT WITHIN 6 TO 12 MONTHS THAT THEY WILL BE  
12:22PM 9 THERE.

12:22PM 10 IT GOES ON. IT SAYS, "THERE ARE 1300 TESTS ON THE  
12:22PM 11 CLINICAL FEE SCHEDULE," SO SORT OF THE UNIVERSE OF TESTS, AND  
12:22PM 12 THEN HE SAYS, "400 ARE 99 PERCENT OF VOLUME, AND 600 ARE 99.9  
12:22PM 13 PERCENT."

12:22PM 14 SO MR. GROSSMAN ALSO UNDERSTANDS THAT THERE ARE A LOT OF  
12:22PM 15 TESTS THAT ARE NOT ORDERED VERY MUCH SO THAT YOU DON'T NEED TO  
12:22PM 16 HAVE 1300 TESTS IN ORDER TO COVER THE WATERFRONT OF, YOU KNOW,  
12:22PM 17 99 PERCENT, OR OBVIOUSLY IF YOU WANTED TO GET TO 90 PERCENT, IT  
12:22PM 18 WOULD PRESUMABLY BE LESS THAN 600 OR LESS THAN 400. SO  
12:22PM 19 MR. GROSSMAN KNOWS ALL OF THAT.

12:22PM 20 AND THIS INFORMATION, THE WAY THAT MR. GROSSMAN IS GETTING  
12:22PM 21 HIS INFORMATION, AS HE TESTIFIED, IS FROM THERANOS.

12:22PM 22 SO THERANOS IS TALKING TO MR. GROSSMAN, AND HE'S TALKING  
12:22PM 23 TO HIS TEAM ABOUT THE RISKS THAT EXIST HERE.

12:23PM 24 LET'S GO TO THE NEXT SLIDE.

12:23PM 25 MORE DISCUSSION ABOUT RISK. THE FDA COULD CHOOSE TO SEND

12:23PM 1 A CEASE AND DESIST ORDER TO THERANOS ANY TIME BECAUSE THEIR  
12:23PM 2 TESTS ARE NOT CLEARED. THERANOS IS CORRECT THAT SUCH AN  
12:23PM 3 AGGRESSIVE SCENARIO WAS UNLIKELY BUT IT COULD HAPPEN.

12:23PM 4 CLIA, THAT'S THE CMS REGULATION, DOES NOT GUARANTEE THE  
12:23PM 5 COMPANY THAT THE FDA WILL NOT GO AFTER THEM. THERE ARE  
12:23PM 6 EXAMPLES OF LARGE CLIA LABS OPERATING WITHOUT FDA APPROVAL, AND  
12:23PM 7 THEY NAME SOME OF THOSE.

12:23PM 8 SO, AGAIN, HE KNOWS ABOUT THESE REGULATORY RISKS.

12:23PM 9 LET'S GO FURTHER. THIS IS IN EXHIBIT 4089 STILL.

12:23PM 10 AND HERE YOU CAN SEE IN THE FIRST HIGHLIGHTED PORTION  
12:23PM 11 UNDER THE NUMBER 4, "BASED ON THE DATA I HAVE SEEN SO FAR, I DO  
12:23PM 12 NOT BELIEVE THERANOS HAS ADEQUATE DATA FOR FDA APPROVAL FOR  
12:24PM 13 MANY OF ITS TESTS TODAY (THEY ARE CLEARLY WORKING ON THAT)."

12:24PM 14 SO MR. GROSSMAN KNOWS FULL WELL THEY ARE WORKING ON  
12:24PM 15 CONTINUED R&D WORK. "THE KEY LIMITATION IS SAMPLE SIZE, WHICH  
12:24PM 16 IS EASY TO RESOLVE, BUT FOR SOME TESTS THE PROBLEM MAY BE  
12:24PM 17 DEEPER (SEE BELOW TWO EXAMPLES WHERE IT IS JUST UNCLEAR WHETHER  
12:24PM 18 INCREASING THE N WOULD ACTUALLY LEAD THE TIGHTER R2)."

12:24PM 19 THAT R2 IS THE CORRELATION BETWEEN THE THERANOS TEST AND  
12:24PM 20 THE FDA APPROVED DEVICE.

12:24PM 21 SO THEY ARE NOT SUGAR COATING THIS, AS MR. SCHENK ARGUED  
12:24PM 22 IN THE GOVERNMENT'S CLOSING. I THINK MR. SCHENK SAID ANY TIME  
12:24PM 23 MR. BALWANI IS PROVIDING INFORMATION TO INVESTORS, INTERACTING  
12:24PM 24 WITH INVESTORS, HE'S ALWAYS ON THE SIDE OF MORE ENCOURAGING  
12:24PM 25 INFORMATION.

12:24PM 1 BUT HERE THERANOS IS GIVING PFM DATA THAT THEY'RE ABLE TO  
12:25PM 2 USE TO SHOW, WELL, YOU KNOW, THERE ARE SOME ISSUES HERE THAT WE  
12:25PM 3 HAVE TO BE AWARE OF. AND THAT'S THE OPPOSITE OF TRYING TO  
12:25PM 4 INTEND TO DEFRAUD SOMEONE WHERE YOU'RE JUST GIVING EVERYONE  
12:25PM 5 POSITIVE INFORMATION ALL OF THE TIME.

12:25PM 6 IT GOES ON. OF COURSE IN THE MIDDLE SECTION IT SAYS "I  
12:25PM 7 THINK THERE IS RISK HERE." OF COURSE THERE IS.

12:25PM 8 AND THEN IF YOU GO DOWN TO THE BOTTOM HIGHLIGHTING, IT  
12:25PM 9 SAYS, "IT IS NOT UNUSUAL TO SEE RISKS LIKE THESE IN EARLY STAGE  
12:25PM 10 INVESTMENTS."

12:25PM 11 I'LL JUST PAUSE THERE. SO MR. GROSSMAN UNDERSTANDS THIS  
12:25PM 12 IS AN EARLY STAGE INVESTMENT, AND OF COURSE IT IS BECAUSE AT  
12:25PM 13 THIS POINT THERE ARE THREE STORES AND THE GOAL IS TO GET TO  
12:25PM 14 HUNDREDS OR THOUSANDS OF STORES. SO THAT'S WHAT MR. GROSSMAN  
12:25PM 15 UNDERSTANDS.

12:25PM 16 AND YOU KNOW, I SHOULD SAY, AND I'VE BEEN SAYING THIS A  
12:25PM 17 LOT BECAUSE IT'S TRUE, THAT THESE ARE ALL DOCUMENTS THAT THE  
12:25PM 18 DEFENSE HAD TO SHOW ABOUT WHAT PFM REALLY UNDERSTANDS AND WHAT  
12:26PM 19 THEY'RE DISCUSSING, AND WHAT RISKS THEY'RE AWARE OF, AND WHAT  
12:26PM 20 THEY LEARN FROM THERANOS.

12:26PM 21 AND DURING MR. GROSSMAN'S TESTIMONY, HE BASICALLY JUST  
12:26PM 22 TESTIFIED FROM MEMORY FOR THE MOST PART WITHOUT ALL OF THESE  
12:26PM 23 DOCUMENTS.

12:26PM 24 AND IT'S THE DOCUMENTS, THE CONTEMPORANEOUS DOCUMENTS THAT  
12:26PM 25 EXISTED AT THE TIME THAT REALLY TELL THE STORY OF WHAT HAPPENED

12:26PM 1 AT THERANOS, NOT SOMEONE'S MEMORY, YOU KNOW, MANY, MANY YEARS  
12:26PM 2 AFTER THE FACT AS WAS THE CASE WITH MR. GROSSMAN.

12:26PM 3 LET'S GO FURTHER ON THIS SAME POINT OF RISK.

12:26PM 4 HERE'S ANOTHER ONE, AN INTERNAL EMAIL WITH MR. GROSSMAN  
12:26PM 5 AND HIS TEAM ON JANUARY 29TH, 2014. "WE HAD ONE MORE DILIGENCE  
12:26PM 6 CALL TODAY WITH A SCIENTIST WHO DEVELOPS LAB BASED TESTS, AND  
12:26PM 7 HE CONFIRMED EVERY POINT THAT THERANOS MADE WITH THE EXCEPTION  
12:26PM 8 OF PUTTING MACHINES AT WAG LOCATIONS."

12:26PM 9 SO PFM IS NOT JUST STANDING STILL EITHER. THEY'RE DOING  
12:26PM 10 WORK. THEY'RE TALKING TO OUTSIDE SCIENTISTS, AND THEY'RE  
12:26PM 11 CONFIRMING THINGS, OR IN SOME CASES NOT CONFIRMING THINGS.

12:27PM 12 "THERANOS MEETS CLIA REQUIREMENTS ON MOST OF THEIR TESTS  
12:27PM 13 AS WE KNOW.

12:27PM 14 "FDA STANDARDS ARE MUCH HIGHER THAN CLIA."

12:27PM 15 OF COURSE WE KNOW LATER THERANOS GOT APPROVAL FOR ONE OF  
12:27PM 16 ITS ASSAYS RUNNING ON THEIR SYSTEM.

12:27PM 17 AND THEN IF YOU GO DOWN TO THE BOTTOM WHERE IT'S  
12:27PM 18 UNDERLINED THERE IT SAYS, "I CONTINUE TO BELIEVE THAT THIS IS  
12:27PM 19 AN ACCEPTABLE RISK FOR A PRIVATE INVESTMENT AS LONG AS WE  
12:27PM 20 BELIEVE UPSIDE IN THE BASE CASE SCENARIO JUSTIFIES TAKING THE  
12:27PM 21 RISK OF AN FDA ACTION AND/OR ROLLOUT DELAY."

12:27PM 22 SO IT'S WHAT YOU WOULD THINK. THIS IS A COMPANY WHO IS  
12:27PM 23 GOING TO INVEST A LOT OF MONEY IN THERANOS AND IS LOOKING AT  
12:27PM 24 THE RISK AND REWARD, AND YES, THEY UNDERSTAND THE RISKS, BUT  
12:27PM 25 THEY ALSO UNDERSTAND THERE'S GREAT REWARD IF THE WALGREENS



12:27PM 1 ROLLOUT ISN'T DELAYED AND IT GOES FORWARD IN THE WAY THAT  
12:27PM 2 EVERYONE HOPES IT WILL AT THIS POINT IN TIME AND EVEN LATER IN  
12:27PM 3 2014 AND '15.

12:28PM 4 GO TO THE NEXT SLIDE.

12:28PM 5 THIS IS AN EMAIL BETWEEN MR. BALWANI AND MR. GROSSMAN AND  
12:28PM 6 THIS IS ON JANUARY 28TH, 2014.

12:28PM 7 AND THIS IS ABOUT MR. GROSSMAN TOURING THE LAB. SO, FIRST  
12:28PM 8 OF ALL, MR. BALWANI WRITES THERE IN THE HIGHLIGHTED SECTION AT  
12:28PM 9 THE BOTTOM, "LAB IS GOING TO BE VERY DIFFICULT AS LARGE PARTS  
12:28PM 10 OF IT ARE PATENT PENDING AND/OR NOT FILED YET."

12:28PM 11 WELL, WHAT WE HAVE SEEN ON SEPTEMBER, I BELIEVE IT WAS  
12:28PM 12 SEPTEMBER 9TH, IT'S SEPTEMBER IN 2013, IN FACT, THERANOS FILED  
12:28PM 13 THAT PATENT FOR ITS MODIFIED PREDICATE DEVICES, WHICH THERANOS  
12:28PM 14 CONSIDERED ITS PROPRIETARY TECHNOLOGY. THAT PATENT WAS  
12:28PM 15 PENDING.

12:28PM 16 SO THAT IS A TRUE STATEMENT. AND THAT'S JUST THE ONE  
12:28PM 17 PATENT.

12:28PM 18 THEN MR. GROSSMAN RESPONDS, "OK THANKS. IS THERE A WAY WE  
12:28PM 19 CAN SEE A PART OF THE LAB WITHOUT COMPROMISING THE PATENT  
12:29PM 20 PENDING OR UNFILED PARTS OF IT?"

12:29PM 21 SO MR. GROSSMAN UNDERSTANDS THE PROPRIETARY TECHNOLOGY AND  
12:29PM 22 HE'S NOT REALLY PUSHING IT.

12:29PM 23 AND HE SAYS, "THIS IS MORE A PERFUNCTORY EXERCISE TO MAKE  
12:29PM 24 SURE THERE IS ACTUALLY A LAB THERE."

12:29PM 25 SO IT'S PERFUNCTORY. MR. GROSSMAN WANTS TO MAKE SURE THAT

12:29PM 1 THERE'S ACTUALLY A LAB. IT'S NOT JUST AN EMPTY BUILDING OR  
12:29PM 2 SOMETHING.

12:29PM 3 WELL, OF COURSE THERE'S A LAB. WE ALL KNOW THAT.

12:29PM 4 WHAT ELSE DOES MR. GROSSMAN KNOW?

12:29PM 5 SO THIS IS ON JANUARY 28TH AS WELL. AND MR. BALWANI IS  
12:29PM 6 EMAILING MR. GROSSMAN. AND HE SAYS, "ON YOUR TESTS. THERE WAS  
12:29PM 7 A CONTROL THAT FAILED ON ONE OF THE ASSAYS AND THE LAB RERAN  
12:29PM 8 THE SAMPLE."

12:29PM 9 SO THIS IS MR. BALWANI DIRECTLY TELLING MR. GROSSMAN, A  
12:29PM 10 CONTROL FAILED, SO WE RERAN IT. HE'S NOT SUGAR COATING IT.  
12:29PM 11 HE'S NOT TRYING TO HIDE THAT FROM MR. GROSSMAN. HE'S TELLING  
12:29PM 12 HIM FLAT OUT BEFORE MR. GROSSMAN'S INVESTMENT, A CONTROL  
12:29PM 13 FAILED.

12:29PM 14 AND WHAT DOES MR. GROSSMAN RESPOND WHEN HE FORWARDS THAT  
12:30PM 15 EMAIL TO HIS TEAM, INCLUDING DR. RABODZEY, "REAL WORLD. REAL  
12:30PM 16 WORLD." SO HE KNOWS.

12:30PM 17 HERE'S DR. RABODZEY TALKING ABOUT TESTS HE GOT AT  
12:30PM 18 THERANOS. SO OF COURSE THEY'RE GOING TO THERANOS AND TRYING  
12:30PM 19 OUT THE SERVICE.

12:30PM 20 AND BRIAN GROSSMAN SAYS, "STILL TOOK A LONG TIME."

12:30PM 21 AND DR. RABODZEY SAYS "GOT THE RESULTS.

12:30PM 22 "LOOKS CONSISTENT WITH PREVIOUS TESTS."

12:30PM 23 SO THE TEST RESULTS LOOKED GOOD IN TERMS OF THE ACCURACY  
12:30PM 24 OF THEM, BUT IT TOOK A LONG TIME.

12:30PM 25 AND I WANT TO TALK ABOUT THAT FOR A MINUTE, AND WE'LL SEE

12:30PM 1 THIS IN THE NEXT EXHIBIT AS WELL. AND THAT IS, YOU SAW, AND  
12:30PM 2 YOU MAY REMEMBER IN THE SLIDE DECK THAT PFM WAS SHOWN, THERE'S  
12:30PM 3 A REFERENCE TO FOUR HOUR TURN-AROUND TIME.

12:30PM 4 AND I THINK THE GOVERNMENT SAID, WELL, YOU KNOW, THIS IS  
12:30PM 5 ANOTHER AREA WHERE IT'S SOME KIND OF DECEPTIVE PRACTICE TO TELL  
12:31PM 6 INVESTORS THAT, WELL, WE HAVE A FOUR HOUR TURN-AROUND TIME AT  
12:31PM 7 THERANOS.

12:31PM 8 BUT ACTUALLY, AS I WAS SAYING YESTERDAY, THOSE SLIDES ARE  
12:31PM 9 A MIX, A HODGEPODGE OF THINGS THAT ARE HAPPENING AND THINGS  
12:31PM 10 THAT THE COMPANY IS HOPING, SOME OF THE PHASE II WHERE YOU'RE  
12:31PM 11 GOING TO HAVE DEVICES AT THE STORE, SOME OF THE PHASE I.

12:31PM 12 BUT HERE MR. GROSSMAN KNOWS FULL WELL, AND HIS TEAM AS  
12:31PM 13 WELL, THAT THERE'S NOT GOING TO BE A FOUR HOUR TURN-AROUND TIME  
12:31PM 14 WITH THERANOS IF YOU'RE DOING AN ESSENTIAL LAB MODEL. YOU'VE  
12:31PM 15 GOT TO GET THE SAMPLE COLLECTED, YOU'VE GOT TO SHIP IT TO THE  
12:31PM 16 LAB, AND THEN YOU'VE GOT TO DO THE TESTS AND GET THE RESULTS.

12:31PM 17 SO THEY'RE NOT HIDING THAT. THEY'RE NOT PUTTING OUT  
12:31PM 18 RESULTS QUICKER JUST TO PLEASE MR. GROSSMAN AND HIS TEAM.  
12:31PM 19 THEY'RE PUTTING RESULTS OUT WHEN THEY GET OUT, AND THE PFM  
12:31PM 20 PEOPLE UNDERSTAND THAT TOOK A LONG TIME.

12:31PM 21 SAME WITH THE NEXT EXHIBIT. THIS IS ABOUT HAVING DIRECT  
12:31PM 22 CONNECTIVITY TO PHYSICIANS' OFFICES.

12:32PM 23 AND DR. RABODZEY SAYS, "I THINK THIS IS SOMETHING THAT CAN  
12:32PM 24 BE RESOLVED IN THE FUTURE WHEN EVERYONE STARTS USING EMR,"  
12:32PM 25 ELECTRONIC MEDICAL RECORD, "WHERE FOR THE NEXT FEW YEARS THIS

12:32PM 1 FOUR HOUR TURN AROUND TIME BENEFIT WILL BE MUTED BY THE FACT  
12:32PM 2 THAT IT STILL TAKES DAYS FOR THE DOCS TO ACTUALLY SEND THE  
12:32PM 3 RESULTS TO PATIENTS."

12:32PM 4 AGAIN, THEY KNOW. THIS IS ASPIRATIONAL AND THIS IS NOT  
12:32PM 5 SOMETHING THAT IS HAPPENING RIGHT NOW, AND THEY KNOW THAT  
12:32PM 6 FIRSTHAND BEFORE THEY ACTUALLY INVEST.

12:32PM 7 SO LET'S TALK ABOUT A DIFFERENT SUBJECT, WHICH IS THE  
12:32PM 8 VENOUS DRAW ISSUE.

12:32PM 9 SO AS I SAID YESTERDAY, THE FACT THAT THERANOS IS DOING  
12:32PM 10 VENOUS DRAWS AND TRADITIONAL METHODS IS RIGHT OUT THERE IN THE  
12:32PM 11 PRESS RELEASE AND ON THE WEBSITE. THERE'S NO HIDING FROM  
12:32PM 12 INVESTORS, OR THE PUBLIC FOR THAT MATTER, AS THE GOVERNMENT HAS  
12:32PM 13 SUGGESTED THAT THERE'S VENOUS DRAWS AT THERANOS.

12:32PM 14 MR. GROSSMAN HAD A SLIGHTLY DIFFERENT ANGLE ON THAT I  
12:32PM 15 GUESS. HE WAS TRYING TO SAY THAT HE DIDN'T -- HE THOUGHT THAT  
12:33PM 16 EVEN IF THERE WAS A VENOUS DRAW, THAT STILL WOULD BE TESTED ON  
12:33PM 17 THERANOS TECHNOLOGY. THAT WAS HIS STATEMENT. THAT WAS THE  
12:33PM 18 ONLY INVESTOR WHO SAID THAT.

12:33PM 19 BUT HERE'S THE DIALOGUE WITH HIM ON CROSS-EXAMINATION.

12:33PM 20 "QUESTION: SO YOU KNEW AT THIS POINT IN TIME IN JANUARY  
12:33PM 21 OF 2014 THAT THERANOS WAS DOING SOME VENOUS TESTING; IS THAT  
12:33PM 22 RIGHT?"

12:33PM 23 HIS ANSWER WAS YES.

12:33PM 24 AND OF COURSE HE KNOWS THAT BECAUSE IT WAS RIGHT OUT THERE  
12:33PM 25 IN THE PUBLIC DOCUMENTS.

12:33PM 1 AND THEN IF YOU LOOK AT THE REST OF THIS, "DURING YOUR  
12:33PM 2 CONVERSATIONS WITH THERANOS, YOU DON'T REMEMBER HAVING ANY  
12:33PM 3 DISCUSSIONS WITH ANYONE AT THERANOS ABOUT HOW THEY WERE TESTING  
12:33PM 4 THOSE VENOUS DRAWS, DO YOU?

12:33PM 5 "I DON'T RECALL SPECIFICALLY."

12:33PM 6 SO HE WAS NOT -- THERE WAS NO REPRESENTATION THAT HE WAS  
12:33PM 7 TESTIFYING ABOUT WHERE SOMEONE AT THERANOS, INCLUDING  
12:33PM 8 MR. BALWANI, TOLD HIM WE'RE DOING TESTING, EVEN IF IT'S  
12:33PM 9 VENOUS DRAW, WE'RE STILL TESTING ON OUR OWN TECHNOLOGY. NOBODY  
12:33PM 10 REPRESENTED THAT TO HIM.

12:33PM 11 HE SAID THAT, BUT IT'S NOT BECAUSE OF ANYTHING THAT  
12:34PM 12 MR. BALWANI OR ANYONE ELSE SAID.

12:34PM 13 OKAY. I WANT TO TURN TO A DIFFERENT SUBJECT BUT STILL  
12:34PM 14 REGARDING PFM ABOUT THE FINANCIAL MODELS SPREADSHEET.

12:34PM 15 OBVIOUSLY PFM IS A SOPHISTICATED INVESTOR. THEY'RE  
12:34PM 16 LOOKING AT THE UPSIDE OF INVESTING HERE BECAUSE THEY KNOW  
12:34PM 17 THEY'RE TAKING A RISK AS WE JUST WENT THROUGH.

12:34PM 18 BUT IN ORDER TO JUSTIFY THAT, THEY ALSO HAVE TO UNDERSTAND  
12:34PM 19 WHAT THE UPSIDE IS. SO THERE IS FINANCIAL MODELING THAT  
12:34PM 20 THERANOS, INCLUDING MR. BALWANI, GIVES THEM, AND THEN IN  
12:34PM 21 ADDITION THERE'S FINANCIAL MODELING THAT PFM DOES ON ITS OWN.

12:34PM 22 THIS IS THE MODELING THAT THERANOS PROVIDED.

12:34PM 23 SO WHAT HAPPENED HERE IS THAT MR. BALWANI, AT  
12:34PM 24 MR. GROSSMAN'S REQUEST, SENT MR. GROSSMAN AN ELECTRONIC COPY OF  
12:34PM 25 THE MODEL. NOT JUST A PIECE OF PAPER BUT HERE'S THE MODEL AND

12:34PM 1 IT'S IN AN EXCEL SPREADSHEET FORMAT AND THAT'S WHAT IS ON THE  
12:34PM 2 SCREEN.

12:34PM 3 SO LET'S GO TO SOME OF THE ASPECTS OF THIS.

12:35PM 4 SO THERE'S TABS ON THE BOTTOM IN EXCEL AND HOW IT USUALLY  
12:35PM 5 WORKS. THE FIRST ONE IS CALLED MACRO ASSUMPTIONS AND YOU CAN  
12:35PM 6 SEE HERE RETAIL PHARMACY U.S. ONLY, THE REVENUE PER REQUISITION  
12:35PM 7 IS \$35. SO EVERY PATIENT WOULD BE PAYING \$35 IN THIS MODEL.

12:35PM 8 THEN IT HAS THE FULLY LOADED COST FOR A MINILAB IN 2015 IS  
12:35PM 9 ESTIMATED TO BE \$50,000. AND WE'LL COME BACK TO THAT POINT ON  
12:35PM 10 THE COST. BUT THAT'S BASICALLY WHAT IT COSTS TO PRODUCE A  
12:35PM 11 MINILAB. BUT THAT'S THE PATIENT REVENUE.

12:35PM 12 AND THEN IF YOU GO TO THE NEXT TAB, WHICH IS CALLED  
12:35PM 13 THERANOS MARKET ASSUMPTIONS, THIS IS INFORMATION THAT THERANOS  
12:35PM 14 PROVIDED TO PFM.

12:35PM 15 SO ON THIS ONE, IF YOU LOOK RIGHT AWAY ON JANUARY 14TH,  
12:35PM 16 AND THAT'S WHERE THEY WERE AT THIS POINT WHEN PFM AND THERANOS  
12:35PM 17 WERE TALKING, IT SAYS THAT THE MODEL HAS 11 STORES.

12:35PM 18 WELL, MR. GROSSMAN KNEW RIGHT AWAY THAT THERE WEREN'T 11  
12:35PM 19 STORES, THERE WERE 3, AND HE TALKED ABOUT THAT ON THE WITNESS  
12:36PM 20 STAND. SO IMMEDIATELY THIS WAS OUT OF DATE.

12:36PM 21 IT'S JUST A PROJECTION. IT'S NOT REFLECTING NECESSARILY  
12:36PM 22 WHAT THE REALITY IS. INCLUDING RIGHT FROM THE GET-GO, IT WAS  
12:36PM 23 11 STORES AND THERE WERE ONLY 3. MR. GROSSMAN KNEW THAT.

12:36PM 24 SO IF YOU SCROLL THROUGH THAT SAME LINE, YOU SEE THAT  
12:36PM 25 THERE'S PROJECTIONS FOR HOW THE WALGREENS PROJECT WILL EXPAND

12:36PM 1 OVER TIME. AND, YOU KNOW, IT KEEPS ON GOING ALL THROUGH 2015  
12:36PM 2 UNTIL YOU GET TO, YOU KNOW, THOUSANDS OF STORES.

12:36PM 3 AND WE LOOKED AT THAT YESTERDAY, AND I WON'T REPEAT IT,  
12:36PM 4 BUT THIS IS IN JANUARY '14, THE WALGREENS PARTNERSHIP WAS  
12:36PM 5 REALLY JUST BEGINNING. THE SKY WAS THE LIMIT. AND THAT  
12:36PM 6 REMAINED TRUE ALL THROUGH '14 AND '15.

12:36PM 7 BUT THIS IS, TO ORIENT US IN TIME, THIS IS EARLY 2014.  
12:36PM 8 AND THIS IS A PROJECTION.

12:36PM 9 OBVIOUSLY MR. GROSSMAN AND HIS TEAM UNDERSTAND THAT MIGHT  
12:36PM 10 NOT HAPPEN. THAT'S CALLED EXECUTION RISK.

12:37PM 11 OKAY. LOOK AT ROW 7, THOUGH, OF THIS CHART. AND THIS IS  
12:37PM 12 THE ROW THAT HAS THE NUMBER OF TESTS PER DAY PER LOCATION.

12:37PM 13 SO THAT'S IMPORTANT INFORMATION BECAUSE IF YOU'RE GOING TO  
12:37PM 14 TRY TO PROJECT WHAT THE REVENUE MIGHT LOOK LIKE, YOU WANT TO  
12:37PM 15 KNOW NOT ONLY THE NUMBER OF STORES, BUT HOW MANY TESTS PER DAY  
12:37PM 16 ARE YOU GOING TO DO, AND HOW MANY TESTS PER DAY ARE YOU GOING  
12:37PM 17 TO BE DOING AT EACH LOCATION?

12:37PM 18 AND YOU CAN SEE THE PROJECTION IS FOR JANUARY OF 2014  
12:37PM 19 THERE'S GOING TO BE 10 PATIENTS PER STORE PER DAY, AND THEN  
12:37PM 20 THERE'S JUST A PROJECTION OF HOW THAT WOULD EXPAND GOING  
12:37PM 21 FORWARD.

12:37PM 22 IF YOU LOOK AT ROW 17, THAT'S THE TOTAL NUMBER OF RETAIL  
12:37PM 23 LOCATIONS. SO THAT'S SIMILAR TO WHAT WE JUST LOOKED AT.

12:37PM 24 THERE IS OTHER RETAIL RELATIONSHIPS THAT YOU'VE HEARD SOME  
12:37PM 25 ABOUT, INCLUDING SAFEWAY.

12:37PM 1 THE GOVERNMENT DIDN'T PRESENT ANY EVIDENCE ON THAT. BUT  
12:37PM 2 THIS IS THE TOTAL RETAIL LOCATIONS, INCLUDING WALGREENS.

12:38PM 3 ROW 22 HAS TO DO WITH PHYSICIANS' OFFICES, AND WE'LL TALK  
12:38PM 4 MORE ABOUT THAT, BUT THIS IS HOW MANY PHYSICIANS' OFFICES ARE  
12:38PM 5 GOING TO BE USING THERANOS FOR BLOOD TESTS. LIKE, FOR EXAMPLE,  
12:38PM 6 WHEN WE GET TO DR. ZACHMAN AND HER CLINIC, THE SOUTHWEST  
12:38PM 7 CONTEMPORARY WOMEN'S CLINIC, THAT WAS ONE OF THE PHYSICIANS'  
12:38PM 8 OFFICES, BUT THERE WERE OTHERS, AND THAT'S WHAT THAT  
12:38PM 9 REPRESENTS, THAT ROW, AND ESTIMATING HOW MANY THAT THERE WOULD  
12:38PM 10 BE -- HOW MANY PHYSICIANS' OFFICES AND WHAT THE REVENUE WOULD  
12:38PM 11 BE FROM THAT.

12:38PM 12 YOU CAN SEE THAT DOESN'T EVEN START UNTIL MARCH, SO  
12:38PM 13 THEY'RE NOT ESTIMATING ANY PHYSICIANS' OFFICES IN JANUARY AND  
12:38PM 14 FEBRUARY. THEY'RE HOPING TO START THAT PROGRAM IN MARCH, AT  
12:38PM 15 LEAST AS A PROJECTION.

12:38PM 16 HOSPITALS IS A ROW, HOSPITALS COURIER, PICKING UP SAMPLES  
12:38PM 17 FROM THE HOSPITALS. SAME THING. THERE'S NOTHING ESTIMATED  
12:38PM 18 UNTIL APRIL, AND THEN THERE'S TEN.

12:38PM 19 SO THIS IS JUST A PROJECTION THAT IS GIVEN TO MR. GROSSMAN  
12:38PM 20 AND HIS TEAM.

12:39PM 21 HOSPITAL ONSITE SERVICES. THERE'S NO REVENUE PROJECTED  
12:39PM 22 THERE AT ALL UNTIL APRIL OF 2015 IF YOU SCROLL ALL OF THE WAY  
12:39PM 23 THROUGH. SO THEY'RE NOT THINKING ABOUT THAT FOR OVER A YEAR.

12:39PM 24 AND THEN DEPARTMENT OF DEFENSE, WHICH IS ROW 35, YOU HEARD  
12:39PM 25 INVESTORS TALKING ABOUT THINKING THERE WAS A RELATIONSHIP WITH



12:39PM 1 DEPARTMENT OF DEFENSE, AND WE'LL TALK MORE ABOUT THAT. WE DID  
12:39PM 2 GO THROUGH THE MILITARY RELATIONSHIP YESTERDAY.

12:39PM 3 BUT HERE THE IMPORTANT POINT IS THAT IT'S ALL TO BE  
12:39PM 4 DETERMINED. THERE'S NO REVENUE PROJECTED AT ALL FOR THE  
12:39PM 5 DEPARTMENT OF DEFENSE.

12:39PM 6 SO MR. GROSSMAN IS NOT RELYING ON A PROJECTION THAT THE  
12:39PM 7 MILITARY IS GOING TO BE PAYING THERANOS MONEY BECAUSE IT'S ALL  
12:39PM 8 TO BE DETERMINED. THERE'S NO NUMBERS THERE.

12:39PM 9 IF YOU GO TO THE NEXT TAB OF THE SPREADSHEET, IT'S CALLED  
12:39PM 10 A PRO FORMA INCOME STATEMENT. AND THIS MAY LOOK FAMILIAR TO  
12:39PM 11 YOU BECAUSE THERE'S OTHER INVESTORS, INCLUDING RDV, WHERE THAT  
12:40PM 12 WAS MS. PETERSON WHO TESTIFIED, AND ALSO MR. MOSLEY WHO SAW A  
12:40PM 13 VERY SIMILAR DOCUMENT IN OCTOBER, ACTUALLY EARLIER THAN THAT  
12:40PM 14 WHEN IT GOT THOSE BINDERS. AND IT LOOKS VERY SIMILAR.

12:40PM 15 BUT YOU'LL SEE, WHEN IT GETS TO THOSE INVESTORS, THAT THE  
12:40PM 16 2013 COLUMN IS NO LONGER THERE, AND THEN THE 2014 AND '15  
12:40PM 17 COLUMNS ARE, AND THE NUMBERS ARE DIFFERENT.

12:40PM 18 BUT HERE THIS IS THIS PROJECTION, IT'S PROJECTED STATEMENT  
12:40PM 19 OF INCOME, AND IT HAS WHAT THEY'RE THINKING. IF YOU LOOK AT  
12:40PM 20 2013, WE KNOW FROM MS. SPIVEY'S TESTIMONY THAT \$25 MILLION FROM  
12:40PM 21 WALGREENS CAME IN IN 2013.

12:40PM 22 AND THEN FOR 2014 IT'S A PROJECTION. AND THERE ARE  
12:40PM 23 DIFFERENT SECTORS. SO RETAIL PHARMACIES, THAT'S WALGREENS,  
12:40PM 24 PHYSICIANS' OFFICES, HOSPITALS, ONSITE HOSPITALS, AND THEN  
12:40PM 25 PHARMACEUTICAL SERVICES. AND I'M GOING TO TALK ABOUT EACH OF

12:41PM 1 THOSE. AND DEPARTMENT OF DEFENSE.

12:41PM 2 I'M GOING TO TALK ABOUT EACH OF THOSE AS I GO FURTHER  
12:41PM 3 HERE.

12:41PM 4 JUST PAUSE ON THIS FOR A MINUTE. THERE'S ALSO COST, AND  
12:41PM 5 IF YOU LOOK AT ROW 23, I THINK IT IS, RETAIL PHARMACY. SO FAR  
12:41PM 6 THE COST IS, THAT'S THE COST OF REVENUE, AND EACH OF THOSE HAS  
12:41PM 7 A COST ASSOCIATED WITH IT.

12:41PM 8 NOW, MR. GROSSMAN UNDERSTOOD THAT THIS WAS JUST A MODEL.  
12:41PM 9 SO AS WITH ANY MODEL, IF YOU CHANGE THE ASSUMPTIONS, THEN THE  
12:41PM 10 NUMBERS, THE REVENUE NUMBERS, AND ALL OF THE OTHER NUMBERS, ARE  
12:41PM 11 GOING TO CHANGE, AND THAT'S THE WHOLE POINT OF THESE KINDS OF  
12:41PM 12 PROJECTIONS. NO ONE CAN PREDICT THE FUTURE. WE ALL WISH WE  
12:41PM 13 COULD, BUT WE CAN'T.

12:41PM 14 SO THE POINT IS LET'S MODEL THIS BASED ON THE INFORMATION  
12:41PM 15 THAT WE HAVE AND IN THIS CASE DISCLOSE TO MR. GROSSMAN. HE  
12:42PM 16 UNDERSTOOD THAT THE SPREADSHEET ENABLED HIM TO SEE ALL OF THE  
12:42PM 17 ASSUMPTIONS, THE FORMULAS THAT WENT INTO THE MODEL.

12:42PM 18 AND IF YOU GO TO THE NEXT PAGE.

12:42PM 19 AND HE UNDERSTOOD, OF COURSE, THAT IF YOU CHANGE THE  
12:42PM 20 ASSUMPTIONS, THAT WILL CHANGE THE OUTPUT IN THE MODEL. IT'S  
12:42PM 21 JUST MATH, RIGHT?

12:42PM 22 AS I SAID A MINUTE AGO, LET'S TALK ABOUT THE SOURCES OF  
12:42PM 23 INCOME IN THE MODEL.

12:42PM 24 SO THERE'S THE RETAIL PHARMACY SECTOR, THERE'S THE  
12:42PM 25 PHYSICIANS' OFFICES, THERE'S THE HOSPITALS, AND THERE'S THE

12:42PM 1 PHARMACEUTICAL COMPANIES IN THAT SPREADSHEET THAT WE JUST SAW.

12:42PM 2 I DON'T HAVE DEPARTMENT OF DEFENSE THERE, THE DOD, BECAUSE  
12:42PM 3 THOSE WERE ALL TO BE DETERMINED. THESE WERE THE ONES WITH  
12:42PM 4 NUMBERS WITH PROJECTIONS, SO LET'S GO THROUGH THOSE ONE AT A  
12:42PM 5 TIME.

12:42PM 6 SO THE FIRST ONE IS RETAIL. AND I WON'T REPEAT WHAT I HAD  
12:42PM 7 SAID YESTERDAY ABOUT WALGREENS, BUT WALGREENS WAS COMMITTED TO  
12:42PM 8 A NATIONAL ROLLOUT. THE EARLY PERIOD OF ROLLOUT REFLECTED BOTH  
12:42PM 9 PARTIES OPTIMISM, AND THE LATER WALGREENS PROJECTIONS GAVE  
12:43PM 10 SUNNY A REASON TO BELIEVE THAT THE ROLLOUT WOULD CONTINUE.

12:43PM 11 AND AS I SAID YESTERDAY, MR. BALWANI CERTAINLY BELIEVED  
12:43PM 12 THAT IN JANUARY 2014 WHEN HE'S TALKING TO MR. GROSSMAN, HE  
12:43PM 13 BELIEVED THAT IN OCTOBER OF 2014 WHEN HE'S TALKING TO  
12:43PM 14 MR. MOSLEY -- MS. PETERSON AND MR. MOSLEY, AND HE BELIEVES THAT  
12:43PM 15 INTO 2015 WHEN WALGREENS IS STILL TELLING THERANOS THEY'RE  
12:43PM 16 COMMITTED TO THE ROLLOUT, AND THEY WANT TO COME UP WITH PLANS  
12:43PM 17 TO DO THAT.

12:43PM 18 BUT THAT'S THE RETAIL ISSUE. SO THAT, THAT REVENUE  
12:43PM 19 PROJECTION THAT WAS GIVEN TO PFM IS ALL BASED ON THE WALGREENS  
12:43PM 20 PROGRAM AND OTHER RETAIL PROGRAMS THAT THERANOS HAS.

12:43PM 21 THE NEXT POINT IS PHYSICIANS' OFFICES THOUGH. AND HERE  
12:43PM 22 THE QUESTION IS LIKE WHAT IS THERANOS DOING TO TRY TO MAKE THAT  
12:43PM 23 A REALITY, RIGHT?

12:43PM 24 AND REMEMBER, THEY WEREN'T SAYING THAT'S GOING TO HAPPEN  
12:43PM 25 RIGHT AWAY. THEY WERE LOOKING TO ADD PHYSICIANS' OFFICES AS

12:43PM 1 THE MONTHS AND YEARS WENT BY.

12:43PM 2 AND THIS IS FROM THE WALGREENS PARTNERSHIP MEETING MINUTES  
12:44PM 3 FROM -- IT HAPPENS TO BE JANUARY OF 2015. AND THE SOURCE IS  
12:44PM 4 EXHIBIT 20238.

12:44PM 5 AND HERE THERE'S A RECITATION THAT THERE'S 180 TO 200  
12:44PM 6 PHYSICIANS THAT ARE USING THERANOS EXCLUSIVELY AT THAT POINT IN  
12:44PM 7 TIME.

12:44PM 8 SO THERANOS DID THE WORK. I MEAN, AS YOU HEARD IN THE  
12:44PM 9 TRIAL, YOU'VE GOT TO GO TO THESE PHYSICIANS' OFFICES, YOU'VE  
12:44PM 10 GOT TO EXPLAIN TO THEM WHAT THE SERVICE IS. BUT THERANOS WAS  
12:44PM 11 DOING THE HARD WORK OF LIKE UP PHYSICIANS.

12:44PM 12 SO THIS REVENUE WAS NOT MADE UP. IT WAS SOMETHING THAT  
12:44PM 13 THEY WERE REALLY DOING, AND BY JANUARY OF 2015 THEY ACTUALLY  
12:44PM 14 HAD A COUPLE OF HUNDRED PHYSICIANS' OFFICES LINED UP.

12:44PM 15 HOSPITAL SECTOR. ALSO THERANOS WAS DOING THE HARD WORK OF  
12:44PM 16 ADDING HOSPITALS. THIS IS NOT SOMETHING THAT IS MADE UP  
12:44PM 17 EITHER.

12:44PM 18 AND MR. GROSSMAN HIMSELF TESTIFIED THAT AT A CONFERENCE,  
12:44PM 19 INTERMOUNTAIN HEALTH SYSTEMS, A VERY LARGE HEALTH SYSTEM,  
12:45PM 20 ANNOUNCED THE STRATEGIC PARTNERSHIP WITH THERANOS, ONE OF THE  
12:45PM 21 LARGEST HOSPITAL NETWORKS IN THE U.S.

12:45PM 22 SO THEY WERE LINING UP HOSPITALS TO USE THE THERANOS  
12:45PM 23 SERVICE. SO, AGAIN, THESE PROJECTIONS THAT WERE MADE TO  
12:45PM 24 MR. GROSSMAN, THESE WERE NOT FRAUDULENT. THESE WERE THINGS  
12:45PM 25 THAT THE COMPANY INTENDED TO DO, AND DID DO.

12:45PM 1 THE NEXT ONE IS PHARMA. AND THE GOVERNMENT SPENT A LITTLE  
12:45PM 2 TIME ON THIS IN CLOSING, I BELIEVE, SAYING THAT THEY HAD  
12:45PM 3 NOTHING GOING ON WITH PHARMACEUTICAL COMPANIES. THAT'S NOT  
12:45PM 4 TRUE, EITHER.

12:45PM 5 BUT LET'S START THIS TOPIC OF PHARMACEUTICAL -- PROJECTED  
12:45PM 6 REVENUE FROM PHARMACEUTICAL COMPANIES IN THIS TESTIMONY FROM  
12:45PM 7 MR. GROSSMAN.

12:45PM 8 AND HE SAYS THAT "THEY," MEANING THERANOS, "TOLD US IN THE  
12:45PM 9 FIRST MEETING THAT THERANOS WAS SHIFTING THEIR EMPHASIS IN THE  
12:45PM 10 NEAR TERM TO THE RETAIL ROLLOUT, BUT THEY STILL HAD A VERY, A  
12:45PM 11 VERY -- A BIG FOCUS ON CONTINUING TO WORK WITH PHARMA. IT WAS  
12:46PM 12 IN THE FINANCIAL MODEL THAT THEY SHOWED US."

12:46PM 13 SO THAT'S TRUE. IT WAS IN THE FINANCIAL MODEL THAT  
12:46PM 14 THERANOS SHOWED MR. GROSSMAN, AND IT'S ALSO TRUE THAT THERANOS  
12:46PM 15 WAS FOCUSING AT THAT POINT ON RETAIL.

12:46PM 16 BUT IT'S ALSO TRUE THAT THEY DID HAVE A FOCUS ON  
12:46PM 17 CONTINUING TO WORK WITH PHARMA, AND I WANT TO SHOW YOU EXACTLY  
12:46PM 18 WHAT THAT LOOKED LIKE IN THE FOLLOWING EXHIBITS.

12:46PM 19 SO, FIRST OF ALL, THIS IS IN THE CONTRACT. THIS IS IN THE  
12:46PM 20 CONTRACT BETWEEN THERANOS AND WALGREENS IN 2012. AND RIGHT IN  
12:46PM 21 THE CONTRACT THOSE PARTIES CONTEMPLATED THERE WOULD BE  
12:46PM 22 POTENTIAL BUSINESS PARTNERSHIPS WITH PHARMACEUTICAL COMPANIES.  
12:46PM 23 THERANOS WILL EXTEND ITS CLINICAL TRIAL INFRASTRUCTURE TO  
12:46PM 24 INCLUDE WALGREENS STORES SO THAT PHARMACEUTICAL CLINICAL TRIAL  
12:46PM 25 PATIENTS WILL HAVE THE OPTION TO HAVE THEIR SPECIMENS COLLECTED

12:46PM 1 AT A WALGREENS LOCATION.

12:46PM 2 SO THE CONCEPT IS NOT VERY DIFFERENT FROM RETAIL. JUST  
12:46PM 3 LIKE A RETAIL CUSTOMER WHO WANTS TO GET A BLOOD TEST CAN GO TO  
12:46PM 4 A WALGREENS STORE, HOPEFULLY VERY CONVENIENT FOR THEM, A PERSON  
12:47PM 5 WHO IS ENROLLED IN A CLINICAL TRIAL FOR A BIG PHARMA COMPANY  
12:47PM 6 CAN SIMPLY, YOU KNOW -- AND THEY HAVE TO BE MONITORED, THEIR  
12:47PM 7 BLOOD MARKERS ON WHATEVER ASSAY IT IS HAVE TO BE MONITORED,  
12:47PM 8 THAT PERSON CAN GO TO THE WALGREENS STORE AND GET THE TEST  
12:47PM 9 THERE AND THAT RESULT WILL GO TO THE CLINICAL TRIAL STUDY FOR  
12:47PM 10 THAT RESEARCH PURPOSE.

12:47PM 11 SO THAT'S WHAT WALGREENS AND THERANOS CONTEMPLATED, AND  
12:47PM 12 THAT WAS RIGHT IN THE CONTRACT.

12:47PM 13 AND THEN THERANOS WORKED ON TRYING TO MAKE THAT A REALITY.

12:47PM 14 SO OBVIOUSLY YOU PROJECT REVENUE. THE KEY IS YOU'VE GOT  
12:47PM 15 TO DO SOMETHING TO TRY TO MAKE THAT REAL, AND THERANOS DID DO  
12:47PM 16 THAT.

12:47PM 17 SO HERE'S AN EMAIL FROM NOVEMBER 23RD, 2013. IT'S FROM A  
12:47PM 18 PERSON AT PFIZER. IT SAYS, "CHRISTIAN."

12:47PM 19 AND THEN THE HIGHLIGHTED PART, "PLEASE TAKE MY MAIL AS AN  
12:47PM 20 EXPRESSION OF INTEREST AND EXCITEMENT WITH YOUR TECHNOLOGY AND  
12:47PM 21 ASPIRATIONS THAT WE CAN MOVE FORWARD WITH DISCUSSIONS AND  
12:48PM 22 HOPEFULLY A PARTNERSHIP. THIS WOULD BE AN EXCELLENT  
12:48PM 23 OPPORTUNITY TO FURTHER ENGAGE PFIZER SENIOR MANAGEMENT."

12:48PM 24 SO CONTRARY TO THE GOVERNMENT'S CLAIM WITH MR. WEBER ON  
12:48PM 25 THE STAND, THIS WAS NOT -- PFIZER WAS STILL INTERESTED EVEN IN

12:48PM 1 NOVEMBER OF 2013. BUT THAT WAS PART OF THE PHARMACEUTICAL  
12:48PM 2 REVENUE THAT THERANOS WAS HOPING FOR DOWN THE LINE.

12:48PM 3 AND THEN RESPONSE FROM MS. HOLMES, "WE ARE VERY INTERESTED  
12:48PM 4 IN PUTTING A LONG TERM, STRATEGIC PARTNERSHIP IN PLACE WITH  
12:48PM 5 PFIZER AND LOOK FORWARD TO THE OPPORTUNITY TO DISCUSS THAT."

12:48PM 6 THIS GOES ON WELL INTO '14, 2014. THIS IS AN EMAIL FROM A  
12:48PM 7 PERSON AT GENENTECH, ANOTHER PHARMACEUTICAL COMPANY. AND HE'S  
12:48PM 8 BACK FROM SABBATICAL AND WANTS TO PICK UP THE CONVERSATION  
12:48PM 9 ABOUT HOW GENENTECH, ROCHE AND WALGREENS CAN COLLABORATE IN THE  
12:48PM 10 CLINICAL TRIAL SPACE.

12:48PM 11 AND THEN IT SAYS, "WOULD YOU BE ABLE TO GET MYSELF AND  
12:49PM 12 SEVERAL SENIOR LEADERS FROM GENENTECH AN INTRO TO  
12:49PM 13 ELIZABETH HOLMES AND A VISIT TO THERANOS." SO THERE'S INTEREST  
12:49PM 14 FROM THAT PHARMACEUTICAL COMPANY AS WELL.

12:49PM 15 MORE ON GENENTECH. THIS IS FROM ANOTHER GENENTECH PERSON.  
12:49PM 16 "WE ARE LOOKING FORWARD TO AN EXPLORATORY MEETING TO DISCUSS A  
12:49PM 17 POTENTIAL PARTNERSHIP WHERE WE CAN WORK TOGETHER TO EVOLVE AND  
12:49PM 18 DECENTRALIZE THE CLINICAL TRIAL MODEL."

12:49PM 19 SO DECENTRALIZE MEANS THAT YOU CAN GO GET YOUR BLOOD  
12:49PM 20 TESTED AT WALGREENS RATHER THAN GOING TO SOME CENTER WHERE LIKE  
12:49PM 21 ALL OF THE PATIENTS HAVE TO GO.

12:49PM 22 MR. JHAVERI IS TRYING TO MOVE THIS FORWARD.

12:49PM 23 IF YOU GO TO SLIDE 20566.1.1, MR. ALLEN.

12:50PM 24 "HI SUNNY -- WOULD YOU BE AVAILABLE ON DECEMBER 4TH? THIS  
12:50PM 25 IS AN IMPORTANT MEETING WITH GENENTECH?"

12:50PM 1 AND IT CONTINUES, THIS IS ON OCTOBER 15TH, 2014, ABOUT THE  
12:50PM 2 INTRO TO THERANOS AND ELIZABETH HOLMES.

12:50PM 3 "HOWIE WILL BE GIVING A CLINICAL TRIALS OVERVIEW AND THEN  
12:50PM 4 WE'D LIKE TO SEE THE PALO ALTO STORE WITH THERANOS."

12:50PM 5 AND THEN IT TALKS ABOUT THEIR EXPRESSION OF INTEREST. SO  
12:50PM 6 THEY'RE TRYING TO LINE UP THESE MEETINGS TO MOVE THAT PROJECT  
12:50PM 7 FORWARD SO THAT PATIENTS CAN END UP GOING TO WALGREENS FOR  
12:50PM 8 THEIR CLINICAL TRIAL TESTS.

12:50PM 9 HERE'S THE NEXT ONE. THIS IS WITHIN WALGREENS, DR. GOLUB  
12:50PM 10 AT WALGREENS IS SAYING THAT ANOTHER ISSUE IS WHETHER THEY,  
12:50PM 11 GENENTECH, CAN WORK DIRECTLY WITHOUT WAG, WITHOUT WALGREENS.  
12:51PM 12 AS WE DISCUSSED, IT WAS MY IMPRESSION THAT THEY WERE  
12:51PM 13 CONSIDERING THIS DURING THE VISIT TO OUR STORE.

12:51PM 14 YOU CAN SEE THAT MR. JHAVERI IN THE NEXT EMAIL ON  
12:51PM 15 JANUARY 2ND, 2015, HE SAYS "THANKS HOWARD. WE SHOULD NOT HAVE  
12:51PM 16 THERANOS AND GENENTECH WORK WITHOUT US. THERE IS A REVENUE  
12:51PM 17 STREAM THAT WE WILL LOSE IF PATIENTS ARE NOT COMING TO THE  
12:51PM 18 STORES FOR THE THERANOS SERVICE."

12:51PM 19 SO MR. JHAVERI UNDERSTANDS THIS IS A REVENUE STREAM, AND  
12:51PM 20 THAT IS EXACTLY WHAT MR. BALWANI AND THERANOS PROJECTED WHEN  
12:51PM 21 THEY WERE TALKING TO MR. GROSSMAN AND OTHER INVESTORS, THAT  
12:51PM 22 THERE WOULD BE A POTENTIAL REVENUE STREAM.

12:51PM 23 NOW, IT TAKES A LOT OF WORK TO PUT THAT INTO ACTION. IT  
12:51PM 24 TAKES A LOT OF MEETINGS AND WORK. AND SOMETIMES THE TIMEFRAME  
12:51PM 25 OF THAT TAKES LONGER THAN YOU WANT, AND THAT'S THE WAY BUSINESS



12:51PM 1 WORKS. BUT THEY ARE WORKING ON THIS, AND MR. JHAVERI CERTAINLY  
12:51PM 2 THINKS THIS IS A REVENUE STREAM, JUST LIKE MR. BALWANI THOUGHT.  
12:51PM 3 AND THEN THERE ARE OTHER PHARMACEUTICAL COMPANIES. THIS  
12:51PM 4 ONE IS ABOUT ABBOTT. THEY WANT TO TALK ABOUT USING THERANOS  
12:52PM 5 STORES FOR A TEST TRIAL, ANOTHER BIG PHARMACEUTICAL COMPANY.  
12:52PM 6 AND THEN IF WE GO TO THE NEXT ONE.  
12:52PM 7 IT'S ABOUT A MEETING WITH -- ABOUT A  
12:52PM 8 PFIZER/WALGREENS/THERANOS RELATIONSHIP. "REVIEWING PFIZER'S  
12:52PM 9 PROPOSED SCOPE AND MODEL FOR THE WALGREENS PILOT."  
12:52PM 10 "BRAINSTORM OF KEY METRICS TO BE CAPTURED AND MEASURED AS  
12:52PM 11 A BASIS FOR COMPARISON TO OUR TRADITIONAL CLINIC-BASED STUDY  
12:52PM 12 APPROACH."  
12:52PM 13 SO MORE INTEREST FROM PFIZER.  
12:52PM 14 AND HERE'S ANTHONY BROGNO FROM WALGREENS WHO WORKS CLOSELY  
12:52PM 15 WITH CASEY KOZLOWSKI, IMPLEMENTING CLINICAL TRIALS IN OUR  
12:53PM 16 STORES AND PFIZER IS INTERESTED IN CONDUCTING AN EXPERIMENT.  
12:53PM 17 SO THIS IS IN FEBRUARY OF 2015 AND HE'S INVITING THE  
12:53PM 18 THERANOS TEAM TO HELP WITH THAT.  
12:53PM 19 SO JUST PAUSING THERE TO SUM UP THAT TOPIC BEFORE WE MOVE  
12:53PM 20 ON. SO THE GOVERNMENT SPENT SOME TIME SAYING THAT THE  
12:53PM 21 PHARMACEUTICAL PROJECTION THAT WAS GIVEN TO MR. GROSSMAN AND  
12:53PM 22 OTHER INVESTORS, LIKE MR. MOSLEY AND RDV, THE DEVOS FAMILY, IS  
12:53PM 23 JUST NOT TRUE, THAT THERE'S NOTHING GOING ON, THERE'S NO  
12:53PM 24 POSSIBILITY, THIS IS DEAD.  
12:53PM 25 NO. THERE'S ACTUALLY QUITE A LOT OF INTEREST IN MOVING

12:53PM 1 THAT FORWARD, AND YOU'RE MAKING A PROJECTION, AND THEN YOU'VE  
12:53PM 2 GOT TO POUND THE PAVEMENT AND HAVE MEETINGS, AND YOU'VE GOT TO  
12:53PM 3 PUT IT INTO MOTION. SOMETIMES IT WORKS OUT, SOMETIMES IT  
12:53PM 4 DOESN'T.

12:53PM 5 BUT WHEN YOU START WITH THE PROJECTION, IT DOESN'T MEAN  
12:53PM 6 THE PROJECTION IS FRAUDULENT IF IT ENDS UP NOT ACTUALLY  
12:53PM 7 OCCURRING. YOU ONLY CAN GO WITH THE INFORMATION THAT YOU HAVE.

12:53PM 8 AND THAT'S WHAT I MEANT A COUPLE OF DAYS AGO WHEN I TALKED  
12:53PM 9 ABOUT NOT LOOKING AT THIS CASE WITH THE BENEFIT OF HINDSIGHT.

12:54PM 10 SO WHAT YOU CAN'T DO IS SAY, WELL, WE KNOW NOW THAT THEY  
12:54PM 11 DIDN'T ACTUALLY HAVE CLINICAL TRIAL PATIENTS COMING TO THERANOS  
12:54PM 12 STORES.

12:54PM 13 AS IT TURNS OUT, THAT'S NOT RELEVANT. WE HAVE TO LOOK AT  
12:54PM 14 WHAT MR. BALWANI WAS SEEING AT THE TIME, AND WAS HE REASONABLE  
12:54PM 15 IN PROJECTING REVENUE IN THE PHARMACEUTICAL SECTOR FROM THIS  
12:54PM 16 CLINICAL TRIAL WORK?

12:54PM 17 AND THE ANSWER IS YES BECAUSE THEY WERE TRYING TO MOVE  
12:54PM 18 THIS FORWARD. AND THAT'S WHAT MR. BALWANI WAS SEEING THROUGH  
12:54PM 19 HIS EYES IN REAL TIME.

12:54PM 20 I WANT TO MOVE ON, THOUGH, TO ANOTHER TOPIC, BUT STILL  
12:54PM 21 REGARDING THE INVESTOR PFM AND MR. GROSSMAN. AND THAT IS,  
12:54PM 22 MR. GROSSMAN MADE A BIG DEAL ON THE WITNESS STAND ABOUT THE  
12:54PM 23 COST OF COMMERCIAL DEVICES VERSUS THE COST OF THERANOS  
12:54PM 24 ANALYZERS.

12:54PM 25 AND HE SAID THAT HE DIDN'T KNOW ABOUT THE COMMERCIAL

12:54PM 1 ANALYZERS, AND THE REASON THIS WAS SO CONCERNING TO HIM IS  
12:54PM 2 BECAUSE HE THINKS COMMERCIAL ANALYZERS ARE REALLY EXPENSIVE.  
12:55PM 3 HE DIDN'T SAY WHAT THAT COST WAS. WE DIDN'T GET THAT EVIDENCE.  
12:55PM 4 BUT HE THINKS THOSE ARE EXPENSIVE AND THAT YOU HAVE TO BUY  
12:55PM 5 A LOT OF COMMERCIAL ANALYZERS AS OPPOSED TO MAKING THESE  
12:55PM 6 SMALLER THERANOS EDISONS THAN, YOU KNOW, THAT'S GOING TO  
12:55PM 7 JUST -- I THINK HIS WORDS WERE, THERE'S NO INDUSTRIAL LOGIC TO  
12:55PM 8 THAT IS WHAT HE SAID. YOU CAN'T HAVE LOWER PRICES IF YOU'RE  
12:55PM 9 ALSO BUYING THESE COMMERCIAL MACHINES.  
12:55PM 10 AND I JUST WANT TO TAKE A FEW MINUTES TO UNPACK THAT.  
12:55PM 11 SO WHAT MR. GROSSMAN CAN'T TELL YOU AND DIDN'T TELL YOU IS  
12:55PM 12 HE DOESN'T KNOW WHAT THE THIRD PARTY MACHINES COST. HE DIDN'T  
12:55PM 13 SAY ANYTHING ABOUT THAT.  
12:55PM 14 HE DIDN'T KNOW WHETHER THERANOS WAS PURCHASING OR LEASING  
12:55PM 15 THEM.  
12:55PM 16 HE DOESN'T KNOW HOW MANY THERANOS HAS ALREADY IN THEIR  
12:55PM 17 POSSESSION, COMMERCIAL DEVICES.  
12:55PM 18 HE DOESN'T KNOW WHEN THERANOS BOUGHT THE COMMERCIAL  
12:55PM 19 DEVICES THEY HAVE IN THEIR POSSESSION.  
12:55PM 20 AND THERE REALLY ISN'T ANY EVIDENCE IN THIS CASE ABOUT HOW  
12:55PM 21 THE COST OF THIRD PARTY DEVICES WOULD AFFECT THE THERANOS  
12:55PM 22 FINANCIAL MODEL.  
12:55PM 23 SO IF WE GO BACK TO THE SPREADSHEET THAT WE WERE LOOKING  
12:56PM 24 AT BEFORE, THIS IS EXHIBIT 13720 CAPITAL A. SO THERE'S THE  
12:56PM 25 MACRO ASSUMPTIONS TAB. AND AT THE TOP, 2014 DEVICE COST PLUS

12:56PM 1 INSTALLATION CONFIGURATION PLUS TRAINING IS ESTIMATED TO BE  
12:56PM 2 \$70,000.

12:56PM 3 AND THEN 2015 COST, THE SAME COST IS ESTIMATED TO BE  
12:56PM 4 \$50,000, PRESUMABLY BECAUSE AS YOU GET MORE EXPERIENCE, THERE'S  
12:56PM 5 WHAT IS CALLED ECONOMIES OF SCALE AND MAYBE YOU CAN MAKE THEM  
12:56PM 6 FOR LESS.

12:56PM 7 SO THAT'S THE COST PROJECTION.

12:56PM 8 IF WE GO TO THE MARKET ASSUMPTIONS TAB, AND IN PARTICULAR  
12:56PM 9 ROWS 53 AND 54, THEN WE SEE THERE THE TOTAL NUMBER OF MINILABS  
12:56PM 10 PRODUCED. AND IF YOU SCROLL THROUGH THAT, IT JUST HAS AN  
12:56PM 11 ESTIMATE OF OVER TIME HOW MANY MORE THEY'RE GOING TO HAVE TO  
12:56PM 12 ADD EACH MONTH AS TIME GOES ON TO MEET THE DEMAND THAT THEY'RE  
12:56PM 13 EXPECTING, THAT THEY'RE PROJECTING.

12:56PM 14 AND YOU CAN SEE BY THE END OF 2015 WHEN THE SPREADSHEET  
12:57PM 15 STOPS, THEY ARE INTO 2,000 DEVICES. SO YOU CAN DO THE MATH,  
12:57PM 16 BUT, YOU KNOW, 2,000 DEVICES AT \$50 TO \$70 PER DEVICE IS QUITE  
12:57PM 17 A LOT OF COST, AND THERE'S NO EVIDENCE IN THIS CASE ABOUT HOW  
12:57PM 18 THAT COMPARES TO THE COST OF BUYING COMMERCIAL MACHINES LIKE  
12:57PM 19 SIEMENS ADVIA.

12:57PM 20 SO MR. GROSSMAN IS SAYING THAT, THAT THIS WAS A HUGE BIG  
12:57PM 21 DEAL. BUT IF HE REALLY THOUGHT IT WAS A BIG DEAL AND HE REALLY  
12:57PM 22 WAS PREPARED, HE WOULD KNOW OR HE WOULD HAVE HAD THE  
12:57PM 23 INFORMATION ABOUT WHAT DOES IT COST TO BUY A COMMERCIAL DEVICE  
12:57PM 24 AND HOW IS THAT AFFECT THE BOTTOM LINE, AND HE'S JUST SAYING  
12:57PM 25 THAT, BUT HE REALLY DOESN'T REALLY HAVE ANY DATA.

12:57PM 1 SO AS IT TURNS OUT, THERE REALLY ISN'T ANY EVIDENCE THAT  
12:57PM 2 THAT IS TRUE, THAT SOMEHOW THIS WOULD WIPE OUT THERANOS'S  
12:57PM 3 BUSINESS MODEL IF THEY HAD TO BUY SOME COMMERCIAL DEVICES.

12:57PM 4 BUT IN ANY EVENT, EVEN PUTTING THAT ASIDE, PFM KNOWS FULL  
12:57PM 5 WELL THAT THERANOS HAS COMMERCIAL DEVICES.

12:58PM 6 SO LET'S LOOK AT SOME OF THE SLIDES ON EXHIBIT 4077. THIS  
12:58PM 7 IS ONE OF THE SLIDES IN THE PRESENTATION THAT WAS PROVIDED TO  
12:58PM 8 PFM. AND YOU CAN SEE RIGHT HERE THEY'RE DOING A COMPARISON.  
12:58PM 9 THIS IS THAT R2 NUMBER WHERE IT'S LOOKING AT THE CORRELATION  
12:58PM 10 BETWEEN THE THERANOS DEVICE AND THE COMMERCIAL DEVICE. YOU CAN  
12:58PM 11 SEE RIGHT THERE THEY'RE HAVING TO COMPARE THERANOS TO A SIEMENS  
12:58PM 12 IMMULITE.

12:58PM 13 SO THERE'S A DISCLOSURE THAT, YEAH, WE HAVE COMMERCIAL  
12:58PM 14 DEVICES. WE HAVE TO USE THEM TO DO THE COMPARISON, AND HERE  
12:58PM 15 YOU GO.

12:58PM 16 SAME WITH THE NEXT SLIDE.

12:58PM 17 YOU CAN SEE THERE'S A SIEMENS ADVIA NOTED THERE. THAT'S  
12:58PM 18 RIGHT IN MR. GROSSMAN'S MATERIALS THAT HE AND DR. RABODZEY AND  
12:58PM 19 HIS TEAM REVIEWED.

12:58PM 20 I JUST WANT TO RETURN TO THIS WHILE WE'RE ON THE SUBJECT  
12:58PM 21 OF R2 AND DATA.

12:58PM 22 IF YOU CAN GO TO THE NEXT SLIDE.

12:58PM 23 WE TALKED ABOUT THIS A LITTLE TODAY, BUT HERE'S ANOTHER  
12:59PM 24 EMAIL FROM JANUARY 24TH, 2014 WHERE DR. RABODZEY IS REPORTING  
12:59PM 25 THAT THE PARVOVIRUS IGG ASSAY, WITH 4 PERCENT CV, AND IT SAYS

12:59PM 1 VERSUS THE THERANOS AT 15 TO 20 PERCENT, AND HE NAMES PAGE 143.

12:59PM 2 SO HE'S LOOKING THROUGH THIS PRESENTATION AND HE SEES THAT

12:59PM 3 THERE'S SOME COEFFICIENTS OF VARIATION THAT LOOKS HIGH.

12:59PM 4 AND HE GOES ON, BASICALLY MY CONCERN IS THAT THEIR

12:59PM 5 METHODOLOGY IS STILL RAW AND/OR THEY MAY BE PUSHING LIMITS

12:59PM 6 HERE.

12:59PM 7 AND HE GOES ON TO SAY IF THEY HAVE TO RERUN THESE TESTS

12:59PM 8 QUARTERLY -- NOTE THAT THEY WILL HAVE TO RERUN THESE TESTS

12:59PM 9 QUARTERLY AND LABCORP AND QUEST WILL EAT THEM ALIVE IF THERE'S

12:59PM 10 ANY EVIDENCE OF 20 PERCENT CV HERE.

12:59PM 11 AND THEN HE SAYS RIGHT BELOW THAT, THEIR R2 IS PRETTY

01:00PM 12 POOR AT .91. THERE ARE VERY FEW DATA POINTS AT THE VERY HIGHER

01:00PM 13 END OF THE RANGE. THIS COMPARES TO .992 R2, THE LEINCO LABCORP

01:00PM 14 TEST ON 110 SAMPLES VERSUS THEIR 20.

01:00PM 15 SO DR. RABODZEY AND MR. GROSSMAN, THEY KNOW FULL WELL.

01:00PM 16 AND I WANT TO SAY THIS BECAUSE IT'S BEARS REPEATING THAT THIS

01:00PM 17 IS THERANOS PROVIDING THE DATA. THAT'S THE OPPOSITE OF INTENT

01:00PM 18 TO DEFRAUD. THEY'RE PUTTING THE DATA OUT THERE.

01:00PM 19 AND IF PFM WANTS TO LOOK AT THAT AND SAY, WELL, IT SEEMS

01:00PM 20 LIKE THEY DON'T QUITE HAVE ALL OF THEIR TESTS WHERE THEY NEED

01:00PM 21 TO BE, THEY DON'T HAVE TO INVEST. THEY UNDERSTAND THAT THEY'RE

01:00PM 22 INVESTING IN AN EARLY STAGE COMPANY AND THERE ARE A LOT OF

01:00PM 23 RISKS ASSOCIATED WITH THAT.

01:00PM 24 EVERYONE HOPES THAT THIS IS GOING TO WORK OUT AND THAT

01:00PM 25 THOSE R2'S WILL GET BETTER AND THAT THERANOS'S ROLLOUT WILL GO

01:00PM 1 VERY SMOOTHLY AND BE A SMASHING SUCCESS.

01:00PM 2 MR. BALWANI THINKS THAT AND MR. GROSSMAN IS WILLING TO  
01:00PM 3 TAKE THE RISK ON THAT.

01:01PM 4 AS I SAID EARLIER, MR. GROSSMAN DID HIS OWN MODEL, AND HE  
01:01PM 5 DID NOT JUST RELY ON THERANOS.

01:01PM 6 SO THAT'S THE NEXT SPREADSHEET I WANT TO SHOW YOU.

01:01PM 7 SO THIS IS EXHIBIT 4093. THIS IS A LOT OF FINANCIAL  
01:01PM 8 ANALYSIS THAT MR. GROSSMAN AND HIS TEAM DID. AND THEY HAVE  
01:01PM 9 THEIR OWN PROJECTIONS.

01:01PM 10 NOW, IF YOU LOOK AT THE TABS IN THE BOTTOM, THE ONES THAT  
01:01PM 11 ARE THE ORANGE ONES AND THE BLUE ONES ARE GENERATED BY PFM.  
01:01PM 12 OKAY.

01:01PM 13 BUT YOU CAN SEE IF YOU GO TO THE VALUATION TAB AND IF YOU  
01:01PM 14 LOOK AT THE ROW THAT SAYS 2015, AND THEN IT HAS THE PERCENT  
01:01PM 15 GROWTH FOR THERANOS NET REVENUE.

01:01PM 16 MR. ALLEN, IF YOU COULD JUST HIGHLIGHT THAT RIGHT THERE.  
01:01PM 17 THANK YOU.

01:01PM 18 THAT'S 525 PERCENT. SO AS A JUROR YOU DON'T HAVE TO CHECK  
01:02PM 19 YOUR COMMON SENSE AT THE DOOR OF THE COURTHOUSE. 525 PERCENT  
01:02PM 20 GROWTH IS EXTRAORDINARY. WE ALL HOPE FOR 525 PERCENT GROWTH IN  
01:02PM 21 ALL OF THE THINGS THAT WE DO. BUT THAT'S ENORMOUSLY  
01:02PM 22 SUCCESSFUL, AND THAT'S WHAT PFM THINKS COULD HAPPEN.

01:02PM 23 BUT WHEN YOU DO THAT, YOU KNOW THAT YOU'RE ALSO TAKING ON  
01:02PM 24 A LOT OF RISKS THAT IT WON'T HAPPEN. AND THAT'S THE WHOLE  
01:02PM 25 RISK/REWARD ANALYSIS THAT THESE INVESTORS ARE IN. YES, THEY

01:02PM 1 STAND TO GET A LOT WEALTHIER THAN THEY ALREADY ARE IF THE  
01:02PM 2 WALGREENS ROLLOUT GOES REALLY WELL, BUT AS YOU SAW YESTERDAY,  
01:02PM 3 THEY'RE ALSO ALL REPRESENTING THAT WE CAN AFFORD TO LOSE OUR  
01:02PM 4 ENTIRE INVESTMENT AND WE KNOW THAT COULD HAPPEN.

01:02PM 5 IN FACT -- IF YOU GO TO THE NEXT SLIDE.

01:02PM 6 MR. GROSSMAN AND HIS TEAM VALUED THERANOS AT 20.3 BILLION.  
01:03PM 7 AND THAT'S JUST FOR THE U.S. PORTION OF THE BUSINESS.

01:03PM 8 THERANOS DIDN'T VALUE THE BUSINESS EVEN THAT HIGH.

01:03PM 9 IF YOU GO TO THE NEXT SLIDE.

01:03PM 10 MR. GROSSMAN UNDERSTOOD THAT THERANOS WAS VALUING THE  
01:03PM 11 BUSINESS AT THAT TIME AT \$17 A SHARE AT 9 BILLION.

01:03PM 12 SO THEY WERE MUCH MORE BULLISH ON THERANOS THAN EVEN  
01:03PM 13 THERANOS WAS.

01:03PM 14 OKAY. I WANT TO TALK ABOUT ANOTHER ISSUE REGARDING  
01:03PM 15 MR. GROSSMAN, AND THAT IS, HE TESTIFIED ABOUT A NUMBER OF  
01:03PM 16 \$220 MILLION. AND YOU CAN SEE FROM THE TESTIMONY HERE THE  
01:03PM 17 QUESTION IS, AND THIS IS ON DIRECT EXAMINATION BY THE  
01:03PM 18 GOVERNMENT, "IN THIS MEETING IN DECEMBER OF 2013, DID  
01:03PM 19 MS. HOLMES OR MR. BALWANI MAKE ANY STATEMENTS ABOUT THE AMOUNT  
01:03PM 20 OF REVENUE BEING GENERATED BY THERANOS'S RELATIONSHIP WITH  
01:03PM 21 PHARMA AND THE MILITARY?"

01:03PM 22 THAT'S THE QUESTION.

01:03PM 23 AND THE ANSWER FROM MR. GROSSMAN IS, "I DON'T SPECIFICALLY  
01:04PM 24 RECALL."

01:04PM 25 AND THEN HE SAYS, "WELL, I DO REMEMBER AT THE END OF THE



01:04PM 1 MEETING THEY TOLD US THEY HAD RAISED," SO THE WORD "RAISED"  
01:04PM 2 SUGGESTS RAISING MONEY FROM INVESTORS.

01:04PM 3 BUT THEN HE GOES ON AND SAYS, "OH" -- SO HE CAUGHT  
01:04PM 4 HIMSELF, HE DIDN'T WANT TO SAY RAISE, "I WANT TO SAY IT WAS 220  
01:04PM 5 MILLION OVER THE LAST TEN YEARS THROUGH WORKING WITH THE  
01:04PM 6 MILITARY AND PHARMA."

01:04PM 7 AND THEN THE QUESTION FROM THE GOVERNMENT WAS, "SO YOU  
01:04PM 8 WERE TOLD THAT THERANOS HAD 220 MILLION IN REVENUE?"

01:04PM 9 KIND OF A LEADING QUESTION CONFIRMING THAT.

01:04PM 10 AND HE WAS HAPPY TO SAY YES.

01:04PM 11 "IN SOME COMBINATION FROM PHARMACEUTICAL COMPANIES AND THE  
01:04PM 12 MILITARY?

01:04PM 13 "CORRECT."

01:04PM 14 SO THAT'S HIS TESTIMONY ON DIRECT.

01:04PM 15 BUT ON CROSS HERE'S WHAT HAPPENED -- SO THERE ARE THESE  
01:04PM 16 NUMBERS PROVIDED TO HIM ABOUT THE COMMON STOCK, THE AMOUNT OF  
01:04PM 17 COMMON STOCK OUT THERE AND THE AMOUNT OF PREFERRED STOCK. SO  
01:04PM 18 THAT'S THE INVESTMENT.

01:05PM 19 GUESS WHAT? IT'S 225,944,000 IF YOU ADD THAT UP. SO  
01:05PM 20 ABOUT \$225 MILLION. SO IT'S ALMOST IDENTICAL TO THE 220  
01:05PM 21 MILLION THAT MR. GROSSMAN REMEMBERED.

01:05PM 22 REMEMBER, HE SAID RAISED, AND THEN HE SAID, OH, AND THEN  
01:05PM 23 HE WENT ON AND CLAIMED THAT IT WAS SOMETHING HE THOUGHT WAS  
01:05PM 24 ACTUAL REVENUE THAT THERANOS EARNED, LIKE MILITARY AND  
01:05PM 25 PHARMACEUTICAL COMPANIES PAID 225 MILLION.

01:05PM 1 THAT'S THE NUMBER THAT, AT THAT POINT IN TIME, THERANOS  
01:05PM 2 HAD RAISED SINCE ITS INCEPTION, SO GOING ALL OF THE WAY BACK TO  
01:05PM 3 WHEN MS. HOLMES FOUND THE COMPANY BEFORE MR. BALWANI WAS THERE.  
01:05PM 4 THAT'S THE NUMBER.

01:05PM 5 AND IF YOU GO TO THE NEXT SLIDE, HERE'S WHAT HAPPENED WHEN  
01:05PM 6 HE WAS ASKED ABOUT THAT FURTHER.

01:05PM 7 "AND THOSE TWO ROWS MEAN THAT THERANOS HAD RAISED ABOUT  
01:05PM 8 225 MILLION BY ISSUING STOCK; CORRECT?"

01:05PM 9 AND THIS GUY, IVY LEAGUE EDUCATED HEDGE FUND MANAGER AT  
01:06PM 10 PFM, SAYS, "I'M NOT SURE. I'M NOT AN EXPERT ON BALANCE SHEET  
01:06PM 11 AND ACCOUNTING FOR THIS, SO I DON'T KNOW FOR SURE.

01:06PM 12 "DON'T YOU REVIEW BALANCE SHEETS AS PART OF YOUR DAILY  
01:06PM 13 BUSINESS?"

01:06PM 14 HE SAYS, WE DO, BUT HE CLAIMS IT'S COMPLICATED.

01:06PM 15 AND THEN ULTIMATELY THE ANSWER IS "I DO AGREE THAT IT  
01:06PM 16 REPRESENTS 225 MILLION BETWEEN THESE TWO LINES.

01:06PM 17 "AND THAT CORRESPONDS TO STOCK, THERANOS'S STOCK; RIGHT?

01:06PM 18 "YES."

01:06PM 19 SO HE WAS ABLE TO UNDERSTAND THAT ON THE WITNESS STAND,  
01:06PM 20 BUT HE WANTED TO SAY HE DOESN'T UNDERSTAND BALANCE SHEETS. BUT  
01:06PM 21 AGAIN, DOES THAT MAKE ANY SENSE FROM MR. GROSSMAN? HE DOESN'T  
01:06PM 22 UNDERSTAND BALANCE SHEETS? YOU ALL SAW HIM. YOU ALL HEARD  
01:06PM 23 HIM. WE ALL KNOW HIS BACKGROUND.

01:06PM 24 LET'S TURN TO ANOTHER TOPIC INVOLVING MR. GROSSMAN, AND  
01:06PM 25 THAT'S THE MILITARY.

01:06PM 1 SO HE CLAIMED THAT HE WAS TOLD, AND THERE'S NO DOCUMENTARY  
01:06PM 2 EVIDENCE OF THIS, BUT HE SAID HE WAS TOLD THAT THERANOS HAD  
01:07PM 3 USED ITS ANALYZER IN THE MILITARY IN BATTLE, OR ON THE  
01:07PM 4 BATTLEFIELD AT LEAST, TREATING SOLDIERS.

01:07PM 5 THERE'S NO NOTES OF THAT. THERE'S NO EMAILS ABOUT THAT.  
01:07PM 6 THERE'S NOTHING FROM THERANOS. THERE'S NOTHING INTERNALLY AT  
01:07PM 7 PFM. WE HAVE SEEN ZERO ON THAT, OTHER THAN MR. GROSSMAN SAYING  
01:07PM 8 THAT. THERE'S NO DEPARTMENT OF DEFENSE REVENUE ACCOUNTED FOR  
01:07PM 9 IN THE MODELS.

01:07PM 10 AND JUST A FEW DAYS AFTER THAT -- SO THE PFM MEETING WAS  
01:07PM 11 ABOUT 11 DAYS BEFORE THAT DECEMBER 20TH INVESTOR CALL AND  
01:07PM 12 THAT'S WHEN WE WOULD HAVE KNOWN EXACTLY WHAT IN THIS TIMEFRAME  
01:07PM 13 MS. HOLMES WAS SAYING ABOUT THE MILITARY RELATIONSHIP AND THE  
01:07PM 14 OTHER TOPICS. I WON'T GO INTO THAT AGAIN BECAUSE WE TALKED  
01:07PM 15 ABOUT IT YESTERDAY, BUT THAT WAS OUR WINDOW TO UNDERSTAND IT,  
01:07PM 16 BUT THE GOVERNMENT DIDN'T PLAY IT.

01:07PM 17 BUT HERE MR. GROSSMAN IS GOING FROM MEMORY, NO NOTES, NO  
01:07PM 18 EVIDENCE, NO DOCUMENTARY EVIDENCE.

01:08PM 19 AND ISN'T IT POSSIBLE, RIGHT -- I MEAN, SURE, COULD THERE  
01:08PM 20 HAVE BEEN DISCUSSIONS ABOUT THE POSSIBLE USE OF THERANOS  
01:08PM 21 TECHNOLOGY WITH THE MILITARY? SURE. I MEAN THERANOS HAD BEEN  
01:08PM 22 TALKING ABOUT THAT WITH THE MILITARY AS YOU SAW YESTERDAY WITH  
01:08PM 23 A WHOLE LOT OF EMAILS WITH THE DIFFERENT MILITARY COMMANDS.

01:08PM 24 SO OVER THE COURSE OF NINE YEARS, CAN MR. GROSSMAN  
01:08PM 25 REMEMBER THE EXACT WORDS? COULD THAT HAVE MORPHED FROM THEY

01:08PM 1 TALKED ABOUT THE POSSIBLE USE IN THE MILITARY AND HOW THEY WERE  
01:08PM 2 TRYING TO PUT THE THERANOS TECHNOLOGY IN USE WITH THE MILITARY,  
01:08PM 3 OR EVEN THAT THE THERANOS DEVICE WAS BEING TESTED ON AIRCRAFT  
01:08PM 4 IN AFRICA WITH TEMPERATURES ABOVE 100 DEGREES, WHICH ACTUALLY  
01:08PM 5 HAPPENED, COULD THAT HAVE MORPHED INTO THEY'RE ACTUALLY USING  
01:08PM 6 THAT TO TREAT SOLDIERS WHEN YOU COMBINE THAT WITH THE BURN  
01:08PM 7 STUDY WHERE THEY WERE DOING A STUDY TO SEE HOW IN THE FUTURE  
01:08PM 8 MILITARY PERSONNEL WHO UNFORTUNATELY SUFFERED BURN INJURIES  
01:08PM 9 COULD BE TREATED? I THINK THAT WE CAN'T REALLY TRUST SOMEONE'S  
01:08PM 10 MEMORY FOR NINE YEARS, OR NINE YEARS LATER.

01:09PM 11 AND WE CERTAINLY CAN'T TRUST SOMEONE'S MEMORY BEYOND A  
01:09PM 12 REASONABLE DOUBT AT THIS POINT GIVEN EVERYTHING ELSE WE KNOW  
01:09PM 13 ABOUT THE MILITARY, EVERYTHING ELSE WE KNOW ABOUT THERANOS'S  
01:09PM 14 RELATIONSHIP WITH THE MILITARY, AND THE FACT THAT THE  
01:09PM 15 GOVERNMENT HAD THAT CHANCE, AS I SAID, TO LET US ALL HEAR  
01:09PM 16 EXACTLY WHAT HAPPENED AND THEY DIDN'T DO IT.

01:09PM 17 NOW, MR. GROSSMAN, AS YOU HEARD, AND YOU MIGHT REMEMBER  
01:09PM 18 THIS ON THE STAND, HE ACTUALLY SAID THAT HE HAD EMPLOYEES  
01:09PM 19 WITHIN HIS COMPANY THAT WERE ALSO GIVEN AN OPPORTUNITY TO  
01:09PM 20 INVEST. THEY DIDN'T HAVE TO DO THAT.

01:09PM 21 BUT HE HAD THIS PRACTICE OF HE WOULD -- I THINK HE CALLED  
01:09PM 22 IT CO-INVESTMENT WHERE OTHER PEOPLE COULD MAKE THE SAME  
01:09PM 23 INVESTMENT IN PFM AS THE COMPANY WAS MAKING. AND I WANT TO  
01:09PM 24 TALK ABOUT THAT IN A MINUTE.

01:09PM 25 THE SLIDE ON THE SCREEN THOUGH -- ACTUALLY, LET'S TALK

01:09PM 1 ABOUT THAT.

01:09PM 2 SO THE BUSINESS OUTLOOK, THIS IS THE INTERNAL MEMORANDUM  
01:09PM 3 FROM PFM TO ITS OWN EMPLOYEES EXPLAINING THE UPSIDE SCENARIO  
01:10PM 4 AND THE DOWNSIDE SCENARIO OF INVESTING IN THERANOS.

01:10PM 5 AGAIN, THERE'S NOTHING IN HERE ABOUT THE MILITARY OR  
01:10PM 6 FLYING ON HELICOPTERS OR TREATING SOLDIERS OR REVENUE FROM THE  
01:10PM 7 MILITARY OR ANYTHING LIKE THAT. IT'S ALL REALLY ABOUT THE  
01:10PM 8 RETAIL PROGRAM AND THE RISKS AND REWARDS OF THAT.

01:10PM 9 AND THAT'S EXHIBIT 7411 IF YOU WANT TO LOOK AT THAT.

01:10PM 10 SO THIS IS ALL ABOUT WALGREENS. THAT'S WHAT, THAT'S WHAT  
01:10PM 11 WAS THERE TO MAKE INVESTORS LIKE PFM VERY, VERY WEALTHY INDEED.

01:10PM 12 AND THERE'S NO REASON -- THERE'S NO EVIDENCE IN THIS CASE  
01:10PM 13 THAT MR. BALWANI DIDN'T UNDERSTAND AND BELIEVE THAT WALGREENS  
01:10PM 14 WAS GOING TO BE, AS I SAID, A SMASHING SUCCESS.

01:10PM 15 THE GOVERNMENT SPENT SOME TIME IN CLOSING TALKING ABOUT  
01:10PM 16 HOW, WELL, EVEN IF IT'S POSSIBLE THAT MR. BALWANI BELIEVED AND  
01:11PM 17 IT WAS TRUE THAT WALGREENS WAS PLANNING TO ROLL OUT A LOT OF  
01:11PM 18 STORES AND HAD A NATIONAL COMMITMENT, THE GOVERNMENT SAYS,  
01:11PM 19 WELL, THAT STILL DOESN'T MATTER BECAUSE THE WHOLE BUSINESS  
01:11PM 20 RELATIONSHIP WITH WALGREENS WAS BUILT ON SOME KIND OF FRAUD.

01:11PM 21 WELL, WE KNOW THAT'S NOT TRUE. SO RIGHT FROM THE  
01:11PM 22 BEGINNING BEFORE THEY EVER SIGN ANY CONTRACT WITH THERANOS,  
01:11PM 23 THEY GOT JOHNS HOPKINS TO EVALUATE THE TECHNOLOGY. THEY HAD  
01:11PM 24 THE DEVICE IN THEIR POSSESSION TO TEST FOR A COUPLE YEARS.

01:11PM 25 SO THERE'S NO BASIS TO SAY THAT THIS WHOLE RELATIONSHIP

01:11PM 1 WAS BUILT ON FRAUD.

01:11PM 2 MR. GROSSMAN WAS IN THE SAME POSITION AS MR. BALWANI AT  
01:11PM 3 THAT POINT. MR. BALWANI THOUGHT THEY WERE POTENTIALLY GOING TO  
01:11PM 4 HAVE GREAT SUCCESS WITH WALGREENS. HE WAS WORKING EVERY DAY  
01:11PM 5 WITH EVERYTHING HE HAD TO MAKE THAT A REALITY, AND MR. GROSSMAN  
01:11PM 6 WAS EXCITED ABOUT THAT, TOO, AND ENDED UP MAKING A DECISION TO  
01:11PM 7 INVEST DESPITE KNOWING, AS WE JUST REVIEWED, ALL OF THE RISKS  
01:11PM 8 ASSOCIATED WITH THAT.

01:11PM 9 THAT'S THE END OF MR. GROSSMAN, THAT TOPIC.

01:11PM 10 BUT I WANT TO TALK ABOUT THE NEXT INVESTOR, WHICH IS THE  
01:12PM 11 DEVOS FAMILY. AND THEIR FAMILY COMPANY, THEIR FAMILY OFFICE IS  
01:12PM 12 CALLED RDV. IT STANDS FOR RICHARD DEVOS WHO, AS YOU HEARD, WAS  
01:12PM 13 THE FOUNDER OF AMWAY, AND THAT WAS WHERE THE WEALTH CAME FROM.

01:12PM 14 SO LET'S TALK ABOUT RDV. SO THIS IS THE BASIC STRUCTURE  
01:12PM 15 THAT WE LEARNED FROM MS. PETERSON. SO YOU'VE GOT THE DEVOS  
01:12PM 16 FAMILY. THOSE ARE THE DECISION MAKERS. THOSE ARE THE PEOPLE  
01:12PM 17 WHO RUN THE FAMILY OFFICE. THERE'S AN INVESTMENT COMMITTEE AS  
01:12PM 18 WE HEARD. AND THAT'S A ROTATING GROUP OF WHAT THEY CALL  
01:12PM 19 GENERATION 2 AND GENERATION 3 PEOPLE WITHIN THE DEVOS FAMILY.

01:12PM 20 AND THEN THERE'S JERRY TUBERGEN, WHO IS SORT OF THE  
01:12PM 21 INVESTMENT PROFESSIONAL WHO LEADS THAT OFFICE. THERE'S A GUY  
01:12PM 22 NAMED RANDY DAMSTRA WHO REPORTS TO MR. TUBERGEN. WE DIDN'T  
01:13PM 23 HEAR FROM ANY OF THOSE PEOPLE ON THE TOP, EXCEPT FOR  
01:13PM 24 LISA PETERSON WHO IS PICTURED THERE. THAT WAS THE PERSON WHO  
01:13PM 25 WE HEARD FROM, AND SHE'S ONE OF THE PEOPLE WHO WORKS AT RDV ON

01:13PM 1 EVALUATING, ANALYZING INVESTMENTS.

01:13PM 2 SHE WANTED TO BE INVOLVED WITH THE THERANOS INVESTMENT.

01:13PM 3 SHE HAD BEEN INTERESTED IN ELIZABETH HOLMES AND THERANOS AND

01:13PM 4 SHE ASKED TO BE ON THE PROJECT, AND SHE ENDED UP BEING ON THE

01:13PM 5 PROJECT. BUT THAT'S WHO WE HEARD FROM.

01:13PM 6 WE DIDN'T HEAR FROM THE DECISION MAKERS. WE DIDN'T HEAR

01:13PM 7 FROM THE DEVOS FAMILY. WE DIDN'T EVEN HEAR FROM JERRY TUBERGEN

01:13PM 8 OR RANDY DAMSTRA WHAT ABOUT WHAT THEY THOUGHT.

01:13PM 9 RICK DEVOS, DICK DEVOS, DAN DEVOS, DOUG DEVOS, THESE WERE

01:13PM 10 THE FAMILY DECISION MAKERS ON THE INVESTMENT COMMITTEE. WE

01:13PM 11 DIDN'T HEAR FROM ANY THEM. WE DON'T KNOW WHAT THEY THOUGHT,

01:13PM 12 WHAT THEY HEARD, WHY THEY INVESTED IN THERANOS, WHAT RISKS THEY

01:13PM 13 WERE TAKING, NOTHING.

01:13PM 14 AND AS YOU HEARD FROM MS. PETERSON, SHE CAN'T EVEN SAY

01:14PM 15 THAT THESE DECISION MAKERS READ HER MEMOS. THEY CERTAINLY

01:14PM 16 DIDN'T READ HER SECOND MEMO. SHE CLAIMED THE FIRST MEMO THEY

01:14PM 17 REVIEWED ON THE PLANE, BUT SHE CAN'T SAY THAT ANYONE EVER READ

01:14PM 18 HER MEMOS.

01:14PM 19 NOW, WHY DIDN'T WE HEAR FROM RICK, DICK, DAN, AND

01:14PM 20 DOUG DEVOS? I DON'T KNOW. THE GOVERNMENT DIDN'T CALL THEM.

01:14PM 21 THEY INVESTED \$100 MILLION. YOU WOULD THINK THEY COULD BE

01:14PM 22 BOTHERED TO COME AND TESTIFY. BUT WE DIDN'T HEAR FROM THEM.

01:14PM 23 WE ONLY HEARD FROM MS. PETERSON.

01:14PM 24 THE CENTRAL ISSUE WITH RDV, IF WE GO TO THE NEXT SLIDE, IS

01:14PM 25 ON THE LEFT, AND THAT IS 1853, AND THAT'S A HARD COPY OF THE

01:14PM 1 PART OF THE FINANCIAL MODEL THAT MR. BALWANI AND THERANOS PUT  
01:14PM 2 TOGETHER THAT WAS SENT IN A BINDER TO RDV IN AROUND JULY 2014.

01:15PM 3 THERE WERE TWO BINDERS. ONE HAD SOME SLIDES AND THIS  
01:15PM 4 DOCUMENT AND OTHER THINGS, AND THEN THERE WAS A SECOND BINDER  
01:15PM 5 THAT MS. PETERSON TESTIFIED ABOUT THAT WAS ALL FINANCIAL -- I'M  
01:15PM 6 SORRY, ALL SCIENTIFIC DATA THAT NO ONE EVER LOOKED AT AT RDV.  
01:15PM 7 THAT'S WHAT MS. PETERSON SAID.

01:15PM 8 BUT THIS WAS IN THE FIRST BINDER. AND IF YOU LOOK AT  
01:15PM 9 EXHIBIT 1853, YOU WILL SEE AS OF JULY -- MS. PETERSON KEPT  
01:15PM 10 TALKING ABOUT OCTOBER, BUT THE DATE ON IT, IT'S ON THE PAGE  
01:15PM 11 AFTER THIS, BUT IT'S DATED IN JULY OF 2014, NOT OCTOBER.

01:15PM 12 IN ANY EVENT, IT'S A PROJECTED STATEMENT OF INCOME.

01:15PM 13 THE DOCUMENT ON THE RIGHT THAT WE PUT UP THERE IS JUST THE  
01:15PM 14 SAME DOCUMENT THAT YOU SAW A FEW MINUTES AGO WHEN I WAS TALKING  
01:15PM 15 ABOUT MR. GROSSMAN. THAT'S MR. GROSSMAN'S -- THAT'S THE DATA,  
01:15PM 16 THE SOFT COPY OF THE MODEL THAT THERANOS SENT TO MR. GROSSMAN.

01:15PM 17 AND I'LL JUST PUT IT UP THERE SO YOU CAN SEE HOW SIMILAR  
01:15PM 18 IT IS. AND YOU CAN SEE, AS I SAID BEFORE, ON THE RDV VERSION  
01:16PM 19 THAT IS ON THE LEFT, THE COLUMN 12/31/2013 IS JUST CUT OFF AND  
01:16PM 20 THEY HAVE 2014 AND 2015.

01:16PM 21 SO IT'S BASICALLY THE SAME THING. IT HAS THE SAME  
01:16PM 22 SECTORS, RETAIL, PHYSICIANS, HOSPITALS, PHARMACEUTICAL, AND  
01:16PM 23 THEN DOD IS TO BE DETERMINED, JUST LIKE IT WAS FOR PFM. SO NO  
01:16PM 24 DOD REVENUE PROJECTED.

01:16PM 25 ON THE RETAIL SIDE, THOUGH, THIS WAS A LOT OF THE



01:16PM 1 DISCUSSION WITH MS. PETERSON WHEN SHE WAS ON THE STAND, THE  
01:16PM 2 PROJECTION WAS, AND SHE WROTE IN HANDWRITING YOU CAN SEE AT THE  
01:16PM 3 TOP OF THE PAGE ON THE LEFT, IT'S EXHIBIT 1853, 900 LOCATIONS.

01:16PM 4 NOW, THE GOVERNMENT CLAIMS THAT THAT'S SOME OF FRAUDULENT  
01:16PM 5 PROJECTION. IF YOU'RE PROJECTING 900 LOCATIONS, WHICH COULD  
01:17PM 6 GENERATE 470 MILLION I THINK IT SAYS ON THE REVENUE SIDE,  
01:17PM 7 THAT'S SOMETHING FRAUDULENT BECAUSE THE GOVERNMENT CLAIMS THAT  
01:17PM 8 MR. BALWANI WOULD HAVE UNDERSTOOD FROM MR. JHAVERI AND  
01:17PM 9 WALGREENS THAT THEY WERE SCALING BACK IN THE MIDDLE OF 2014 AND  
01:17PM 10 THAT MR. BALWANI WOULD NOT HAVE HAD A BASIS FOR TALKING ABOUT  
01:17PM 11 THE POSSIBILITY, NOT THE GUARANTEE, BUT THE POSSIBILITY IN A  
01:17PM 12 PROJECTION OF 900 STORES.

01:17PM 13 WELL, WE KNOW THAT'S NOT THE CASE. WE WENT THROUGH  
01:17PM 14 YESTERDAY ALL OF THE EMAILS, ALL OF THE PARTNERSHIP MEETING  
01:17PM 15 MINUTES WITH -- ABOUT MR. JHAVERI AND WALGREENS, AND THIS  
01:17PM 16 PARTNERSHIP WAS EXPANDING IN AUGUST AND AFTER AUGUST OF 2014.  
01:17PM 17 MR. JHAVERI WAS BRAGGING TO MR. MIQUELON ABOUT HOW HE'S GOING  
01:17PM 18 TO GET IT DONE. AND MR. MIQUELON WAS SAYING ROCK ON. AND  
01:17PM 19 MR. JHAVERI WAS TALKING ABOUT ADDITIONAL MARKETS BEYOND  
01:17PM 20 CALIFORNIA, ARIZONA, AND THE NEW YORK AREA.

01:18PM 21 AND THEN HE SENDS AN EMAIL TO MR. BALWANI IN THE MIDDLE OF  
01:18PM 22 AUGUST 2014 AND SAYS WE'RE GOING TO TOUCH 2,000 STORES AND LET  
01:18PM 23 ME KNOW WHICH ONES OUT OF THE 2,000 YOU WANT SELECTED AS GOLD  
01:18PM 24 STORES, THE DEDICATED THERANOS SPACE STORES.

01:18PM 25 TALKING ABOUT WE'RE GOING TO BE IN EVERY HEALTH CARE

01:18PM 1 CLINIC THAT WALGREENS IS GOING TO OPERATE.

01:18PM 2 SO THIS CONCEPT THAT THE 900 IS SOMEHOW FRAUDULENT, THAT  
01:18PM 3 IS SIMPLY NOT TRUE.

01:18PM 4 AND EVEN IF YOU EVALUATED THAT BY ANY STANDARD IT'S NOT  
01:18PM 5 TRUE, BUT CERTAINLY IN THIS CRIMINAL CASE WHEN THE STANDARD IS  
01:18PM 6 BEYOND A REASONABLE DOUBT, THERE IS NO WAY TO SAY THAT  
01:18PM 7 MR. BALWANI'S REPRESENTATION THAT WE COULD GET TO 900 STORES IN  
01:18PM 8 2015 IS SOMEHOW A FRAUDULENT REPRESENTATION. IT SIMPLY IS NOT.

01:18PM 9 GOING TO 2014, THERE'S REVENUE PROJECTED THERE. THE  
01:18PM 10 DOCUMENT IS DATED IN JULY, BUT THE MEETING WITH MS. PETERSON  
01:18PM 11 AND THE DEVOS FAMILY DECISION MAKERS WE DIDN'T HEAR FROM WAS IN  
01:18PM 12 OCTOBER OF 2014, OCTOBER 14TH, TO BE PRECISE.

01:19PM 13 AND MS. PETERSON SAID, LOOK, I -- SHE WASN'T TOLD  
01:19PM 14 SPECIFICALLY THAT THERANOS HAD THAT REVENUE, \$140 MILLION IN  
01:19PM 15 2014, BUT SHE SAID, WELL, IT WAS GETTING LATER IN THE YEAR AND  
01:19PM 16 I WOULD ASSUME THAT THEY WERE GOING TO BE CLOSE.

01:19PM 17 BUT MS. PETERSON KNEW -- AND IT'S RIGHT IN HER MEMO. IN  
01:19PM 18 HER FIRST MEMO SHE TALKS ABOUT SHE KNOWS THEY'RE IN 22 STORES.  
01:19PM 19 AND THEN BY OCTOBER, I THINK SHE KNOWS THAT THERE ARE ABOUT 40  
01:19PM 20 STORES.

01:19PM 21 SO IT JUST DOESN'T ADD UP. THEY KNOW HOW MANY STORES.  
01:19PM 22 THEY KNOW THAT -- AND SHE TESTIFIED TO THIS -- TO HAVE THE  
01:19PM 23 REVENUE THAT IS PROJECTED HERE, YOU HAVE TO HAVE A CERTAIN  
01:19PM 24 NUMBER OF STORES THAT ARE COLLECTING BLOOD AT WALGREENS AND YOU  
01:19PM 25 HAVE TO HAVE A CERTAIN NUMBER OF PHYSICIAN OFFICES.

01:19PM 1 AND THESE ARE THE ASSUMPTIONS THAT I WENT THROUGH WHEN I  
01:19PM 2 WAS TALKING ABOUT MR. GROSSMAN.

01:19PM 3 SO MS. PETERSON KNOWS THIS.

01:19PM 4 SO IT'S JUST MATH, AS MR. GROSSMAN SAID.

01:19PM 5 IF THEY HAVE MORE STORES, THEY'LL HAVE MORE REVENUE.  
01:19PM 6 THAT'S THE LONG AND SHORT OF IT.

01:19PM 7 SO THERE'S NO INTENTION TO MISLEAD RDV, AND IN ORDER TO DO  
01:20PM 8 THAT, YOU'D HAVE TO TELL THEM, NO, WE'VE REALLY GOT HUNDREDS  
01:20PM 9 AND HUNDREDS OF STORES. IF YOU DID THAT, THAT WOULD BE A  
01:20PM 10 PROBLEM.

01:20PM 11 BUT THIS IS WELL-KNOWN, AND WE KNOW THAT FROM  
01:20PM 12 MS. PETERSON'S OWN MOUTH THAT SHE KNOWS HOW MANY STORES THAT  
01:20PM 13 THERE ARE.

01:20PM 14 IF YOU CAN GO TO THE NEXT SLIDE.

01:20PM 15 THAT'S THE WE'RE GOING TO TOUCH 2,000 STORES IN 2015.  
01:20PM 16 THAT'S IN MID-AUGUST.

01:20PM 17 AGAIN, GETTING THIS EMAIL -- REGARDLESS OF WHAT YOU THINK  
01:20PM 18 ABOUT MR. JHAVERI OR HOW HE'S TRYING TO DISTANCE HIMSELF, WHEN  
01:20PM 19 MR. BALWANI GETS AN EMAIL LIKE THAT, WHAT IS HE SUPPOSED TO  
01:20PM 20 THINK? OBVIOUSLY, YEAH, THIS IS GOING TO BE AN EXPANDING  
01:20PM 21 PARTNERSHIP. SO IF ANYTHING, THE 900 STORES THAT MR. BALWANI  
01:20PM 22 TELLS RDV IS POSSIBLE IS CONSERVATIVE COMPARED TO THE 2,000.

01:20PM 23 HERE'S SOME TESTIMONY FROM MS. PETERSON. AND SHE  
01:21PM 24 UNDERSTANDS THAT THERE'S A RISK THAT THE COMPANY, DESPITE THE  
01:21PM 25 GOALS, WOULD NOT ACTUALLY BE ABLE TO OPEN ALL OF THE WALGREENS

01:21PM 1 STORES THAT THEY WANTED TO.

01:21PM 2 KIND OF AN OBVIOUS POINT, BUT IT WAS CONFIRMED WITH  
01:21PM 3 MS. PETERSON.

01:21PM 4 AND HERE'S HER DESCRIPTION OF THE MEETING. SHE SEEMED TO  
01:21PM 5 HAVE A POOR MEMORY ON CROSS IN A LOT OF WAYS, BUT SHE SAID THE  
01:21PM 6 MEETING WAS FOUR OR FOUR AND A HALF HOURS. SHE AGREED WITH  
01:21PM 7 THAT.

01:21PM 8 AND THEN SHE SAID, WE SPENT A FAIR AMOUNT OF TIME ON THE  
01:21PM 9 FINANCIALS AND WHAT MADE UP THE FINANCIALS. SO SHE'S AGREEING  
01:21PM 10 THAT THERE WAS A FINANCIAL DISCUSSION. MR. BALWANI LED THE  
01:21PM 11 DISCUSSION ACCORDING TO MS. PETERSON, AND SHE'S SAYS IT'S A  
01:21PM 12 FOUR, FOUR AND A HALF HOUR MEETING AND THERE'S A FAIR AMOUNT OF  
01:21PM 13 TIME SPENT ON THE FINANCIALS.

01:21PM 14 SO WHEN YOU THINK ABOUT THAT, IN THAT TIME, EVEN IF THE  
01:21PM 15 WHOLE TIME WASN'T SPENT ON FINANCIALS, THE DISCUSSION  
01:22PM 16 LOGICALLY, UNFORTUNATELY MS. PETERSON SAID SHE COULDN'T  
01:22PM 17 REMEMBER, BUT THE WHOLE TIME IS NOT GOING TO BE SPENT ON THE  
01:22PM 18 ONE PAGE THAT MS. PETERSON -- THAT WE JUST SAW, RIGHT,  
01:22PM 19 EXHIBIT 1853.

01:22PM 20 WE KNOW WHAT A FINANCIAL DISCUSSION LOOKS LIKE. WE KNOW  
01:22PM 21 WHAT MR. BALWANI WAS TALKING ABOUT WITH MR. GROSSMAN WHERE  
01:22PM 22 THERE'S ASSUMPTIONS, AND IF YOU'RE CHANGING THE ASSUMPTIONS,  
01:22PM 23 IT'S GOING TO BE DIFFERENT DEPENDING ON WHAT YOU THINK THE  
01:22PM 24 WORLD IS GOING TO LOOK LIKE IN THE FUTURE.

01:22PM 25 AND SO LOGICALLY, THAT'S THE DISCUSSION THAT MS. PETERSON

01:22PM 1 CAN'T REMEMBER. THEY WOULDN'T HAVE SPENT THIS TIME JUST  
01:22PM 2 LOOKING AT ONE PIECE OF PAPER.

01:22PM 3 UNFORTUNATELY, SHE COULDN'T REMEMBER.

01:22PM 4 IF WE LOOK AT THE NEXT SLIDE, QUESTION: MR. BALWANI, HIS  
01:22PM 5 PARTICULAR FOCUS AT THE MEETING WAS ON FINANCIAL INFORMATION?

01:22PM 6 SHE SAYS YES.

01:22PM 7 AND THEN HIGHLIGHTED DOWN ON THE BOTTOM OF THE PAGE, IF  
01:22PM 8 THERE WAS MORE INFORMATION PRESENTED ON THE SCREEN, YOU JUST  
01:22PM 9 CAN'T TELL US ABOUT THAT BECAUSE YOU DON'T REMEMBER IT TODAY?

01:22PM 10 CORRECT.

01:23PM 11 SO SHE'S CLAIMING SHE DOESN'T REMEMBER. WE KNOW THERE WAS  
01:23PM 12 A FINANCIAL DISCUSSION, AND WE KNOW IT TOOK SOME TIME, AND  
01:23PM 13 LOGICALLY IT'S GOING OVER THE ASSUMPTIONS, AND IF WE DON'T HAVE  
01:23PM 14 THE STORES, THE REVENUE IS NOT GOING TO BE THERE. IF WE DON'T  
01:23PM 15 HAVE THE PHYSICIANS' OFFICES, THE REVENUE IS NOT GOING TO BE  
01:23PM 16 THERE. BUT THAT'S WHAT EVERYONE IS HOPING FOR.

01:23PM 17 AND MR. GROSSMAN REMEMBERED THAT MR. BALWANI REVIEWED A  
01:23PM 18 FINANCIAL MODEL USING A LAPTOP, RIGHT? SO LOGICALLY THAT'S HOW  
01:23PM 19 IT'S GOING TO WORK. THIS SOFT COPY, THE EXCEL SPREADSHEET, WE  
01:23PM 20 KNOW WHAT THAT LOOKS LIKE, THE SAME PAGE THAT MS. PETERSON GOT  
01:23PM 21 IS EXACTLY THE SAME FORM THAT MR. GROSSMAN GOT, SO WE KNOW IT  
01:23PM 22 EXISTS IN EXCEL ELECTRONIC FORM. AND THAT WOULD BE LOGICALLY  
01:23PM 23 WHAT YOU WOULD SEE ON THE SCREEN. BUT AGAIN, MS. PETERSON  
01:23PM 24 CAN'T REMEMBER.

01:23PM 25 WHAT SHE DID DO, THOUGH, IS FILL OUT THIS INTERNAL FORM.

01:23PM 1 AND THIS IS, AS SHE EXPLAINED, JUST AN INTERNAL FORM THAT  
01:23PM 2 EXISTS WITHIN RDV AND THEY'VE GOT TO PUT DOWN SOME INFORMATION  
01:24PM 3 ABOUT THE PLANNED END OF THE INVESTMENT AND THE RATE OF RETURN  
01:24PM 4 THAT THEY'RE GOING TO EXPECT AND THINGS LIKE THAT.

01:24PM 5 AND ON THE PLANNED EXIT OR THE PLANNED END DATE OF THE  
01:24PM 6 INVESTMENT, SHE WROTE GUESS, AND THEN SHE PUT DOWN SEVEN YEARS.

01:24PM 7 THIS INFORMATION DID NOT COME FROM THERANOS.

01:24PM 8 SO AS YOU HEARD, AND YOU MIGHT REMEMBER FROM HER  
01:24PM 9 TESTIMONY, THIS WAS CONTEMPLATED TO BE A LONG TERM PARTNERSHIP  
01:24PM 10 BETWEEN THERANOS AND RDV. RDV WAS NOT GETTING INTO THIS  
01:24PM 11 BECAUSE THEY WERE TRYING TO MAKE A QUICK BUCK, SOME QUICK TURN  
01:24PM 12 AROUND AND SELL FOR A HIGHER PRICE IN A NEAR TERM. THIS WAS A  
01:24PM 13 LONG TERM PARTNERSHIP, AND THERANOS DID NOT EVEN PROVIDE AN END  
01:24PM 14 DATE.

01:24PM 15 AND IF YOU GO DOWN, YOU CAN SEE IN HANDWRITING THERE THAT  
01:24PM 16 MS. PETERSON SAID WAS HERS, IT SAYS "THE HOLD PERIOD IS  
01:24PM 17 INDEFINITE."

01:24PM 18 SO WHEN YOU THINK ABOUT THAT LOGICALLY, WHY WOULD THERANOS  
01:24PM 19 BE LIMITED TO TELLING THIS LONG TERM INVESTMENT THAT IS GOING  
01:24PM 20 TO HOLD THEIR SHARES INDEFINITELY, LET'S TELL YOU WHAT IS GOING  
01:25PM 21 ON IN THE CLIA LAB RIGHT NOW, AND SOMEHOW THEY CAN'T SAY  
01:25PM 22 ANYTHING MORE ABOUT WHAT THEIR HOPES AND PLANS AND RESEARCH IS  
01:25PM 23 TO TRY TO GO TO PHASE II AND WHAT THE DEVICES ARE GOING TO LOOK  
01:25PM 24 LIKE WHEN THE 4S IS GOING TO BE PUT INTO USE.

01:25PM 25 WHY CAN'T THEY DO THAT IN A LONG TERM INVESTMENT

01:25PM 1 RELATIONSHIP? WHY ARE THEY LIMITED TO JUST WHAT IS GOING ON IN  
01:25PM 2 THE CLIA LAB RIGHT NOW AS THE GOVERNMENT IS CLAIMING? AND THAT  
01:25PM 3 LOGICALLY DOESN'T MAKE ANY SENSE.

01:25PM 4 "NO RETURN ESTIMATES WERE PROVIDED. THESE ARE RDV  
01:25PM 5 TARGETS."

01:25PM 6 SO SHE'S PUTTING DOWN SEVEN YEARS FIVE TIMES AT 30 PERCENT  
01:25PM 7 INITIAL RETURN ON INVESTMENT, INITIAL RATE OF RETURN RATHER.  
01:25PM 8 THESE ARE NUMBERS SHE'S COMING UP WITH FOR INTERNAL PURPOSES.

01:25PM 9 BUT THERANOS IS NOT REPRESENTING TO RDV, YOU'RE GOING TO  
01:25PM 10 MAKE A CERTAIN AMOUNT OF MONEY OR WE'RE GUARANTEEING ANYTHING  
01:25PM 11 OR THIS IS GOING TO GO REALLY WELL FOR YOU.

01:25PM 12 IT'S WE'RE PROJECTING WHAT COULD HAPPEN.

01:25PM 13 AND AS I SAID BEFORE, EVERY ONE OF THESE INVESTORS SIGNED  
01:26PM 14 A DOCUMENT SAYING WE UNDERSTAND THAT THIS IS SPECULATIVE. THE  
01:26PM 15 PROJECTIONS MIGHT NOT BE -- THEY MIGHT NOT COME TO PASS, AND  
01:26PM 16 WE'RE REPRESENTING THAT WE COULD LOSE EVERY SINGLE CENT OF OUR  
01:26PM 17 INVESTMENT EVEN, IN THE CASE OF RDV, IF IT'S \$100 MILLION.

01:26PM 18 NOW, AS I MENTIONED EARLIER, THERANOS DID PROVIDE A SECOND  
01:26PM 19 BINDER TO RDV.

01:26PM 20 AND WE KNOW FROM PFM AND THE WORK THAT DR. RABODZEY DID AT  
01:26PM 21 PFM IN PARTICULAR, THAT THERE WAS DATA IN THIS BINDER THAT  
01:26PM 22 WASN'T ALL WINE AND ROSES. AND PFM WAS FREE TO DO THAT.

01:26PM 23 BUT THE POINT I'M REALLY MAKING, EVEN IF PFM DIDN'T --  
01:26PM 24 WHICH THEY DIDN'T, THEY DIDN'T EVEN LOOK AT THE SECOND BINDER,  
01:26PM 25 THAT'S WHAT MS. PETERSON SAID. THEIR CHOICE I GUESS.

01:26PM 1 BUT THE POINT IS THAT ONCE THERANOS IS PROVIDING THIS  
01:26PM 2 SCIENTIFIC DATA, THEN, JUST LIKE WITH PFM, THERE WAS NO REASON  
01:26PM 3 TO SEE THAT THERE'S FRAUDULENT INTENT.

01:27PM 4 FRAUDULENT INTENT IS WHERE YOU DON'T PROVIDE DATA THAT IS  
01:27PM 5 NOT ALWAYS LOOKING TERRIFIC, RIGHT? YOU WOULD ONLY PROVIDE  
01:27PM 6 CHERRY PICKED, YOU WOULD ONLY PROVIDE THE GOOD NUMBERS AND NOT  
01:27PM 7 ANYTHING THAT WOULD LEAD ANYONE TO QUESTION.

01:27PM 8 AND WE KNOW WHAT THAT DATA LOOKS LIKE BECAUSE WE KNOW WHAT  
01:27PM 9 DR. RABODZEY DID IN THE CASE OF PFM.

01:27PM 10 OKAY. SO MS. PETERSON, IT LOOKED LIKE, WHEN YOU LOOK AT  
01:27PM 11 HER FIRST MEMO THAT SHE WROTE, AND THEN YOU LOOK AT THE  
01:27PM 12 ROGER PARLOFF ARTICLE, YOU CAN SEE IF YOU DO THAT COMPARISON  
01:27PM 13 THAT MOST OF WHAT MS. PETERSON PUT IN HER MEMO IS REALLY JUST  
01:27PM 14 CRIBBED FROM THE PARLOFF ARTICLE.

01:27PM 15 BUT SHE HAD THIS WAY ON THE WITNESS STAND OF ANYTHING THAT  
01:27PM 16 ANYBODY ASKED HER ABOUT THIS OCTOBER 14TH MEETING THAT SHE  
01:28PM 17 ATTENDED WITH THE DEVOS DECISION MAKERS, SHE WOULD READILY  
01:28PM 18 AGREE THAT ANYTHING THAT WAS SAID WAS ACTUALLY SAID, REGARDLESS  
01:28PM 19 OF THE TOPIC.

01:28PM 20 IF YOU HAD ASKED HER, I SUSPECT, ABOUT ANY OTHER THING  
01:28PM 21 THAT HAPPENED IN THE WORLD THAT WAS SAID AT THE MEETING, IF SHE  
01:28PM 22 THOUGHT IT WOULD HELP THE GOVERNMENT, SHE WOULD SAY, YEAH, THAT  
01:28PM 23 HAPPENED AT THE MEETING, TOO. THAT WAS TOLD TO ME AS WELL,  
01:28PM 24 RIGHT?

01:28PM 25 BUT HERE, SHE'S ACTUALLY GOT A PROBLEM BECAUSE SHE'S



01:28PM 1 CLAIMING THERE'S A PARTICULAR STATEMENT, RIGHT?

01:28PM 2 SO THE QUESTION IS, ON CROSS, "SO IS IT YOUR TESTIMONY  
01:28PM 3 TODAY UNDER OATH THAT YOU RECEIVED A SPECIFIC STATEMENT FROM  
01:28PM 4 MR. BALWANI THAT EVERY SINGLE TEST THAT THEY WERE DOING WAS RUN  
01:28PM 5 ON A THERANOS ANALYZER?"

01:28PM 6 SHE SAYS, "I DON'T RECALL SPECIFICALLY WHO SAID IT, BUT  
01:28PM 7 THAT'S WHAT WE WERE TOLD."

01:28PM 8 RIGHT? SO THIS IS ONE OF THOSE EXAMPLES WHERE ANYTHING  
01:28PM 9 ABOUT THIS OCTOBER 14TH MEETING, IF IT LOOKS BAD FOR  
01:28PM 10 MR. BALWANI, SHE'S WILLING TO JUMP ON IT AND SAY, YEAH, THAT  
01:29PM 11 WAS SAID TO ME, TOO.

01:29PM 12 BUT THEN HERE'S WHAT HAPPENED. THERE WAS PRIOR TESTIMONY  
01:29PM 13 THAT SHE GAVE ACTUALLY TO THE GRAND JURY, AND ONE OF THE GRAND  
01:29PM 14 JURORS ASKED THIS QUESTION, AND THE QUESTION WAS: "WELL, I  
01:29PM 15 DON'T HEAR THAT THERE WAS EVER A STATEMENT THAT THE ACTUAL 150  
01:29PM 16 OR 200 TESTS WERE ALL CONDUCTED USING THAT EQUIPMENT. I DON'T  
01:29PM 17 HEAR THAT STATEMENT."

01:29PM 18 THAT WAS A QUESTION THAT THE JUROR ASKED HER.

01:29PM 19 AND SHE SAID, "I DON'T RECALL A SPECIFIC, YOU KNOW, SHE  
01:29PM 20 SAID THIS ON THIS DATE."

01:29PM 21 AND THEN SHE GOES ON TO SAY, YEAH, BUT EVERYTHING ELSE WE  
01:29PM 22 WERE TOLD LED ME TO BELIEVE THAT.

01:29PM 23 BUT SHE WAS CLAIMING ON THE STAND, UNDER OATH, THAT THERE  
01:29PM 24 WAS A SPECIFIC STATEMENT MADE BY EITHER MR. BALWANI OR  
01:29PM 25 MS. HOLMES AT THIS OCTOBER 14TH MEETING THAT THEY WERE DOING

01:29PM 1 EVERY SINGLE TEST ON THE ANALYZER, BUT IN PRIOR TESTIMONY SHE  
01:29PM 2 AGREED THAT SHE DIDN'T RECALL A SPECIFIC STATEMENT THAT SOMEONE  
01:29PM 3 SAID THAT ON THAT DATE.

01:29PM 4 SO THAT'S WHY IT'S IMPORTANT TO REVIEW PRIOR TESTIMONY  
01:30PM 5 SOMETIMES. BUT THAT'S WHAT HAPPENED WITH MS. PETERSON.

01:30PM 6 SHE ALSO, IF YOU REMEMBER HER TESTIMONY, TALKED ABOUT THE  
01:30PM 7 MILITARY RELATIONSHIP, BUT SHE COULDN'T SAY THERE WAS A  
01:30PM 8 REPRESENTATION TO HER MADE ABOUT TREATING SOLDIERS ON THE  
01:30PM 9 BATTLEFIELD.

01:30PM 10 OKAY. IF YOU GO TO THE NEXT SLIDE.

01:30PM 11 SO HER TESTIMONY WAS THAT SHE WAS TRYING TO FIND ANYTHING  
01:30PM 12 SHE COULD IN THE PUBLIC REALM, RIGHT, WHEN SHE WAS WORKING ON  
01:30PM 13 THIS PROJECT ABOUT WHETHER RDV SHOULD INVEST IN THERANOS.

01:30PM 14 IT MAKES SENSE. YOU WOULD DO GOOGLE SEARCHES AND SO  
01:30PM 15 FORTH.

01:30PM 16 IF YOU WERE DOING THAT, IT WOULDN'T BE HARD TO FIND THE  
01:30PM 17 THERANOS WEBSITE OR THE THERANOS PRESS RELEASE WITH WALGREENS,  
01:30PM 18 RIGHT?

01:31PM 19 AND THE WEBSITE, AS YOU CAN SEE RIGHT THERE, SAYS "INSTEAD  
01:31PM 20 OF A HUGE NEEDLE, WE CAN USE A TINY FINGERSTICK OR COLLECT A  
01:31PM 21 MICRO-SAMPLE FROM A VENOUS DRAW."

01:31PM 22 SO THAT'S RIGHT OUT THERE. THERE'S NO HIDING THE FACT  
01:31PM 23 THAT THERE'S VENOUS DRAWS.

01:31PM 24 AND MS. PETERSON DOESN'T REMEMBER THAT. BUT IF SHE'S  
01:31PM 25 DOING A GOOGLE SEARCH, SHE'S DOING PUBLIC INFORMATION SEARCHES,

01:31PM 1 THERE'S NO REASON WHY SHE WOULDN'T COME ACROSS THAT.

01:31PM 2 IN ANY EVENT, IT'S RIGHT OUT THERE, SO THE INTENT IS TO  
01:31PM 3 MAKE SURE THAT'S KNOWN TO THE PUBLIC.

01:31PM 4 AND THE SAME WITH THE WALGREENS PRESS RELEASE THAT WE SAW  
01:31PM 5 BEFORE.

01:31PM 6 THIS IS THE ROGER PARLOFF ARTICLE. THIS IS THE "FORTUNE"  
01:31PM 7 MAGAZINE ARTICLE THAT CAME OUT IN JULY OF 2014 THAT YOU'VE  
01:31PM 8 HEARD ABOUT.

01:31PM 9 AND RIGHT IN THE ARTICLE -- LET ME JUST STEP BACK FOR A  
01:31PM 10 MINUTE.

01:31PM 11 SO MS. PETERSON WAS CLAIMING THAT SHE DOESN'T KNOW THAT  
01:31PM 12 THE BLOOD IS BEING COLLECTED AT WALGREENS AND TRANSPORTED TO A  
01:32PM 13 CENTRAL LAB. SHE THINKS THAT THE TESTING IS GOING ON RIGHT IN  
01:32PM 14 THE STORES WITH THE THERANOS TECHNOLOGY WITH THE EDISONS RIGHT  
01:32PM 15 IN THE WALGREENS STORE. AND THERE'S NO EVIDENCE ABOUT WHY SHE  
01:32PM 16 THINKS THAT.

01:32PM 17 BUT RIGHT IN THE "FORTUNE" ARTICLE THAT SHE CLAIMS THAT  
01:32PM 18 SHE READ, IT SAYS RIGHT THERE, "THE SCALE OF THERANOS'S  
01:32PM 19 OPERATIONS AT THE MOMENT IS MODEST. ITS PHLEBOTOMISTS  
01:32PM 20 CURRENTLY TAKE PHYSICIAN ORDERED BLOOD DRAWS (AND SALIVA,  
01:32PM 21 URINE, FECES, AND OTHER SAMPLES) AT COLLECTION CENTERS THE  
01:32PM 22 COMPANY OPERATES AT ITS HEADQUARTERS IN PALO ALTO AND AT 21  
01:32PM 23 WALGREENS, ONE IN PALO ALTO AND THE REST IN PHOENIX."

01:32PM 24 SO THAT'S RIGHT IN THE ARTICLE. THIS WAS INFORMATION THAT  
01:32PM 25 WAS PROVIDED THAT MS. PETERSON HAD, AND SO SHE WAS ON NOTICE OF

01:32PM 1 THAT IF SHE READ THE ARTICLE AS SHE CLAIMED.

01:32PM 2 BUT THEN SOMETHING INTERESTING THAT HAPPENED ON CROSS IS  
01:33PM 3 THAT THE OTHER PARTS OF THE ARTICLE THAT SHE ALSO WOULD HAVE  
01:33PM 4 HAD NOTICE OF, SHE CLAIMED NOT TO KNOW.

01:33PM 5 SO, FOR EXAMPLE -- LET'S GO TO SLIDE -- IT'S MARKED  
01:33PM 6 1944.4.2, MR. ALLEN. RIGHT. THANK YOU.

01:33PM 7 SO HERE IN THE ARTICLE IT'S PROFESSOR ROBERTSON FROM  
01:33PM 8 STANFORD. HE SAYS, "WHEN I FINALLY CONNECTED WITH WHAT  
01:33PM 9 ELIZABETH FUNDAMENTALLY IS, HE SAYS, I REALIZED THAT I COULD  
01:33PM 10 HAVE JUST AS WELL BEEN LOOKING INTO THE EYES OF A STEVE JOBS OR  
01:33PM 11 A BILL GATES."

01:33PM 12 SO THAT'S WHAT MS. PETERSON WAS INFORMED BY READING THIS  
01:33PM 13 ARTICLE ABOUT WHAT PROFESSOR ROBERTSON THOUGHT ABOUT  
01:33PM 14 ELIZABETH HOLMES.

01:33PM 15 IF YOU GO TO THE NEXT PAGE, THAT TOP ONE IS THE ONE WE  
01:33PM 16 JUST WENT OVER ABOUT THE COLLECTION CENTERS AND NOT HAVING THE  
01:34PM 17 DEVICES IN THE STORES.

01:34PM 18 AND THEN SHE WAS ALSO NOTIFIED THROUGH READING THIS  
01:34PM 19 ARTICLE THAT WALGREENS CEO GREG WASSON TOLD THE AUTHOR OF THE  
01:34PM 20 INTERVIEW THAT HE HOPES TO EVENTUALLY PUT THEM IN THE  
01:34PM 21 PHARMACIES OF THE COMPANY'S EUROPEAN PARTNER CHAIN.

01:34PM 22 AND THEN THERE'S A QUOTE FROM THE CEO OF THE UCSF  
01:34PM 23 CALIFORNIA MEDICAL CENTER, MARK LARET, I THINK THIS IS SO  
01:34PM 24 EXCITING. I MEAN, HERE IT IS, THIS IS THE TRUE TRANSFORMATION  
01:34PM 25 OF HEALTH CARE RIGHT HERE IN FRONT OF US.

01:34PM 1 AND THEN IT GOES ON, THE FIRST TIME I HEARD ABOUT THIS, I  
01:34PM 2 THOUGHT IT WAS -- AND THEN GO TO THE NEXT PAGE -- SNAKE OIL AND  
01:34PM 3 MIRRORS SAYS DAVID HELFET, THE CHIEF OF ORTHOPEDIC TRAUMA AT  
01:34PM 4 THE HOSPITAL FOR SPECIAL SURGERY IN MANHATTAN.

01:34PM 5 AND THEN MS. PETERSON WAS INFORMED BY THIS ARTICLE THAT  
01:34PM 6 AFTER REVIEWING THE VOLUMINOUS VALIDATION STUDIES SUPPLIED TO  
01:34PM 7 HIM BY THE COMPANY, HE'S BECOME A BELIEVER AND HE'S URGING THE  
01:34PM 8 HOSPITAL TO CONSIDER ADOPTION.

01:35PM 9 IT'S REAL DATA, HE SAYS, IT'S NOT THEIR INTERPRETATION.

01:35PM 10 SO THAT'S WHAT MS. PETERSON WAS INFORMED OF AT THE TIME  
01:35PM 11 BEFORE THEY INVESTED.

01:35PM 12 AND THEN THE ARTICLE ALSO INFORMED MS. PETERSON -- IF WE  
01:35PM 13 GO, MR. ALLEN, TO 1944.7.2 -- THAT THERE WERE CHALLENGES, THAT  
01:35PM 14 QUEST DIAGNOSTICS HAD A HUGE INFRASTRUCTURE, 45,000 PEOPLE,  
01:35PM 15 3,000 VEHICLES, 20 AIRPLANES, 8 REGIONAL HUBS, AND SO FORTH.

01:35PM 16 SO MS. PETERSON IS INFORMED IN THIS ARTICLE THAT THERE'S  
01:35PM 17 GOING TO BE A LOT OF WORK TO DO TO GET TO THE POINT OF  
01:35PM 18 COMPETING WITH QUEST DIAGNOSTICS THAT ALREADY HAS ALL OF THAT  
01:35PM 19 INFRASTRUCTURE.

01:35PM 20 REMEMBER, AT THE TIME SHE'S DEALING WITH THERANOS, THERE'S  
01:35PM 21 AT MOST ABOUT 30 STORES.

01:35PM 22 AND THEN SHE'S ALSO INFORMED THAT DAVID BOIES, THE  
01:36PM 23 ATTORNEY, IS ATTENDING THE BOARD MEETINGS.

01:36PM 24 SO MS. PETERSON, AS I SAID A MINUTE AGO -- IF YOU GO TO  
01:36PM 25 THE NEXT SLIDE, MR. ALLEN -- SHE'S WILLING TO SAY WHATEVER SHE

01:36PM 1 CAN THAT IS NEGATIVE. SO RIGHT HERE SHE'S ASKED "WHEN SOMEONE  
01:36PM 2 IS PROJECTING A FUTURE OF A BUSINESS, FOR EXAMPLE, OPENING UP  
01:36PM 3 HUNDREDS OF STORES AT WALGREENS, THERE'S NO GUARANTEES THAT  
01:36PM 4 THAT WILL ACTUALLY HAPPEN?"

01:36PM 5 SHE SAID "CORRECT. BUT THERE WERE FUNDAMENTAL THINGS THAT  
01:36PM 6 WE WERE RELYING ON THAT WEREN'T TRUE."

01:36PM 7 AND SHE SAYS, "THAT THE ANALYZER ACTUALLY WORKED, AND IT  
01:36PM 8 DIDN'T."

01:36PM 9 AND THE QUESTION WAS "YOU'VE NEVER TESTED THE THERANOS  
01:36PM 10 ANALYZER.

01:36PM 11 "NO.

01:36PM 12 "SO YOU DON'T HAVE ANY FIRST-HAND KNOWLEDGE AS TO WHETHER  
01:36PM 13 IT WORKS OR NOT; CORRECT?

01:36PM 14 "CORRECT."

01:36PM 15 AND SHE HAD TO AGREE WITH THAT. SO MS. PETERSON IS LIKE  
01:36PM 16 MORE THAN HAPPY TO SAY THE ANALYZER DOESN'T WORK. BUT SHE  
01:37PM 17 DOESN'T KNOW THAT. SHE'S NOT A SCIENTIST. SHE DOESN'T HAVE  
01:37PM 18 THE DATA.

01:37PM 19 WE ARE AT TRIAL AND WE DON'T HAVE THE DATA BECAUSE, AS  
01:37PM 20 I'LL TALK ABOUT IN A BIT, WE DON'T HAVE THE LABORATORY  
01:37PM 21 INFORMATION SYSTEM.

01:37PM 22 BUT MS. PETERSON CERTAINLY DOESN'T HAVE ANYTHING TO TELL  
01:37PM 23 HER WHETHER THE ANALYZER WORKS OR DOESN'T WORK. SO FOR HER TO  
01:37PM 24 MAKE THAT STATEMENT IS JUST SHOWING, YOU KNOW, SHE WANTS TO SAY  
01:37PM 25 WHAT SHE HAS TO SAY IN ORDER TO LOOK BETTER. YOU KNOW, SHE'S

01:37PM 1 WORKING FOR RDV, THAT'S HER EMPLOYER, AND, YOU KNOW, IT'S  
01:37PM 2 BETTER TO SAY, YEAH, YOU KNOW, WE DIDN'T JUST TAKE A FLYER ON  
01:37PM 3 WALGREENS LIKE EVERYONE ELSE, YOU KNOW, WE WERE FOOLED. RIGHT?  
01:37PM 4 SO SHE'S PRETTY MUCH WILLING TO SAY ANYTHING.

01:37PM 5 AND THEN THERE'S MORE ABOUT THAT. SO IF YOU GO TO THE  
01:37PM 6 NEXT SLIDE.

01:37PM 7 THE QUESTION TO HER WAS, "BUT YOU WOULD HAVE BEEN HAPPY  
01:37PM 8 WITH ANYTHING OVER THE 40," 40 STORES, "RIGHT?"

01:37PM 9 SHE SAID "I THINK I SAID YESTERDAY, IF THEY HAD HIT HALF  
01:38PM 10 OF THESE STORES, WE WOULD HAVE CONSIDERED THAT A SUCCESS."

01:38PM 11 AND THEN THE QUESTION IS, "AND YOU WOULD HAVE BEEN HAPPY  
01:38PM 12 WITH EVEN 200 STORES IN 2015?"

01:38PM 13 AND THEN SHE FIGHTS ABOUT THIS AND SAYS "900."

01:38PM 14 BUT THEN SHE WAS REMINDED ON THE NEXT PAGE, "YOU TOLD THE  
01:38PM 15 GOVERNMENT DURING AN INTERVIEW THAT YOU THOUGHT 900 STORES MAY  
01:38PM 16 HAVE BEEN AMBITIOUS, BUT YOU WERE STILL COMFORTABLE WITH THE  
01:38PM 17 INVESTMENT EVEN IF THERANOS WAS ONLY LOCATED IN 200 STORES?"

01:38PM 18 AND SHE SAYS OKAY.

01:38PM 19 "AND THAT'S WHAT YOU TOLD THE GOVERNMENT?"

01:38PM 20 AND SHE SAYS YES.

01:38PM 21 AND THEN SHE GOES ON TO A DIFFERENT ANSWER, AND THEN COMES  
01:38PM 22 BACK TO IT ON LINE 9 THERE, "AND YOU WOULD HAVE STILL BEEN  
01:38PM 23 COMFORTABLE IF THEY HAD ONLY 200 STORES IN 2015?"

01:38PM 24 AND THE ANSWER IS YES.

01:38PM 25 AND THAT'S BECAUSE SHE HAD PREVIOUSLY TOLD THE GOVERNMENT

01:38PM 1 THAT IN AN INTERVIEW AND SHE EVENTUALLY HAD TO ADMIT THAT.

01:38PM 2 THE POINT IS THAT EVEN IF YOU SOMEHOW BELIEVE THE  
01:38PM 3 GOVERNMENT THAT THE WALGREENS PARTNERSHIP WAS SCALING BACK AND  
01:39PM 4 THEY WERE GOING DOWN FROM 500 TO 200 STORES, WHICH AS I  
01:39PM 5 EXPLAINED YESTERDAY IS NOT THE CASE, BUT EVEN IF IT WAS GOING  
01:39PM 6 DOWN TO 200, THAT'S STILL SOMETHING THAT WOULD HAVE SATISFIED  
01:39PM 7 MS. PETERSON AND THAT'S WHAT SHE SAID, AND AFTER A BIT OF A  
01:39PM 8 STRUGGLE SHE HAD TO ADMIT THAT DURING CROSS-EXAMINATION.

01:39PM 9 AND THEN IN TERMS OF THE DEVOS FAMILY, MS. PETERSON AGREED  
01:39PM 10 THAT BEFORE THE INVESTMENT MEMO, THE APPROVAL MEMO THAT SHE  
01:39PM 11 WROTE, THAT THE DEVOS FAMILY HAD ALREADY COMMITTED VERBALLY,  
01:39PM 12 AND SHE AGREED, YES, THEY DID COMMIT, THEY DID COMMIT VERBALLY  
01:39PM 13 THAT THEY WANTED TO DO 100 MILLION. IT WAS UNDERSTOOD.

01:39PM 14 I THINK SHE DESCRIBED THEY HAD THAT MEETING AND THERE WAS  
01:39PM 15 A VERBAL COMMITMENT.

01:39PM 16 WE DON'T HAVE, AS I SAID BEFORE, RICK, DICK, DAN AND  
01:39PM 17 DOUG DEVOS TO TELL US WHY THEY DID THAT, OR CHERI DEVOS I THINK  
01:40PM 18 WAS ALSO THERE AT THAT MEETING.

01:40PM 19 BUT THAT'S WHAT HAPPENED. SO THE REST OF IT WAS JUST  
01:40PM 20 PAPERING THE FILE IN TERMS OF LISA PETERSON'S MEMO.

01:40PM 21 AND THEN JUST TO SHOW YOU EVEN ON THE SMALL THINGS,  
01:40PM 22 MS. PETERSON, MAYBE YOU REMEMBER IT, MS. PETERSON, I WAS JUST  
01:40PM 23 ASKING WHETHER JERRY TUBERGEN, WHO WAS THE HEAD OF THAT RDV  
01:40PM 24 INVESTMENT GROUP, WAS AN EXPERT ON INVESTMENTS AND SHE, SHE WAS  
01:40PM 25 FIGHTING ON THAT.



01:40PM 1 BUT THEN I SHOWED HER HER PREVIOUS TESTIMONY WHERE SHE DID  
01:40PM 2 SAY HE WAS AN EXPERT ON INVESTMENTS AND SHE HAD TO AGREE.

01:40PM 3 AND I SAID "YOU AREN'T QUITE GETTING THERE WITH ME TODAY;  
01:40PM 4 RIGHT?"

01:40PM 5 SHE SAID YES.

01:40PM 6 SO SHE WAS HAPPY TO ANSWER THE GOVERNMENT'S QUESTIONS WITH  
01:40PM 7 NO PROBLEMS, BUT SHE JUST WASN'T GETTING THERE WITH THE DEFENSE  
01:40PM 8 EVEN WHEN SHE HAD SAID THAT BEFORE UNDER OATH.

01:41PM 9 OKAY. LET'S TURN TO MR. MOSLEY.

01:41PM 10 DO YOU REMEMBER MR. MOSLEY WAS A LAWYER AT CRAVATH,  
01:41PM 11 SWAINE & MOORE IN NEW YORK AND HE SPECIALIZED IN TRUSTS AND  
01:41PM 12 ESTATES. THAT WAS THE WORK THAT HE DID IN HIS CAREER THERE.

01:41PM 13 AND HE HAD A LOT OF VERY HIGH PROFILE CLIENTS LIKE  
01:41PM 14 HENRY KISSINGER AND OTHER WEALTHY FAMILIES, WHICH IS NOT  
01:41PM 15 SURPRISING FOR A TRUST AND ESTATES LAWYER IN NEW YORK TO HAVE  
01:41PM 16 WEALTHY PEOPLE AS CLIENTS. SO THAT WAS MR. MOSLEY.

01:41PM 17 SO, FIRST OF ALL, JUST TO SET A BASELINE HERE. HE HAD NOT  
01:41PM 18 MET AND HAD NO CONVERSATIONS WITH MR. BALWANI UNTIL AUGUST OF  
01:41PM 19 2014.

01:41PM 20 AND THEN IN THE MEMO HE WROTE -- YOU MIGHT REMEMBER  
01:41PM 21 DR. KISSINGER ASKED HIM TO WRITE A MEMO AND HE WROTE THE MEMO,  
01:41PM 22 BUT HE DRAFTED IT WITHOUT EVER HAVING ANY CONTACT WITH  
01:41PM 23 MR. BALWANI OR ANY COMMUNICATIONS.

01:41PM 24 AND THIS IS JUST AN ILLUSTRATION OF THE MINDSET AT THIS  
01:42PM 25 POINT, RIGHT? SO AFTER ALL THAT HAS HAPPENED WITH THERANOS,

01:42PM 1 PEOPLE DON'T WANT TO AGREE THAT THEY APPROVE OF ANYTHING OR  
01:42PM 2 THEY LIKE SOMETHING OR THEY DID ANYTHING THAT WAS HELPFUL TO  
01:42PM 3 THERANOS BECAUSE IT'S RADIOACTIVE TO THEM NOW. WE'RE IN THIS  
01:42PM 4 FEDERAL CRIMINAL TRIAL AND THAT'S A HUGE BIG DEAL.

01:42PM 5 BUT HERE IT'S JUST A SMALL THING, BUT IT ILLUSTRATES THE  
01:42PM 6 MINDSET.

01:42PM 7 MR. MOSLEY IS ASKED THE QUESTION, DID YOU ENCOURAGE THESE  
01:42PM 8 INDIVIDUALS, THESE CLIENTS, HIS CLIENTS, TO INVEST IN THERANOS?  
01:42PM 9 AND HE SAID NO, HE DIDN'T ENCOURAGE THEM.

01:42PM 10 BUT THEN YOU CAN SEE BACK IN REAL TIME -- AND THIS IS WHY  
01:42PM 11 IT'S IMPORTANT TO HAVE THE DOCUMENTS, NOT JUST THE MEMORIES --  
01:42PM 12 HE SAYS TO CHRISTOPHER BOIES, "I AM MORE THAN OKAY WITHOUT IT  
01:42PM 13 AND HOPE ELIZABETH DOES NOT THINK IT NECESSARY. IF I DID NOT  
01:42PM 14 HAVE DEEP TRUST AND FAITH IN ELIZABETH, I WOULD NOT BE INVOLVED  
01:43PM 15 WITH THERANOS AND RECOMMENDING AN INVESTMENT BY CLIENTS."

01:43PM 16 SO HE DID RECOMMEND THE INVESTMENT TO CLIENTS AND HE  
01:43PM 17 DIDN'T WANT TO SAY IT ON THE WITNESS STAND.

01:43PM 18 MR. MOSLEY RECEIVED THE SAME DOCUMENT THAT WE SAW EARLIER  
01:43PM 19 WITH MS. PETERSON. AND HE ALSO HAD A MEETING OUT IN PALO ALTO  
01:43PM 20 AT THERANOS.

01:43PM 21 SO THE SAME DISCUSSION THAT I ALREADY HAD ABOUT THIS  
01:43PM 22 DOCUMENT APPLIES TO MR. MOSLEY. IT WOULD HAVE BEEN A  
01:43PM 23 DISCUSSION OF THE UNDERLYING ASSUMPTIONS. AND, AGAIN, IT'S  
01:43PM 24 PUBLIC THAT THERE ARE ONLY 40 STORES IN 2014 AND THAT THE BASIS  
01:43PM 25 FOR THE 2015 PROJECTION IS THE CONTINUED ROLLOUT OF WALGREENS

01:43PM 1 AND THE OTHER ROLLOUTS THAT I EXPLAINED EARLIER ABOUT PHYSICIAN  
01:43PM 2 OFFICES AND HOSPITALS AND SO FORTH.

01:43PM 3 SO MR. MOSLEY HAS THAT SAME INFORMATION.

01:43PM 4 BUT HE UNDERSTOOD THAT THESE WERE PROJECTIONS. HE SAID  
01:43PM 5 YES, HE UNDERSTOOD THEY WERE PROJECTIONS.

01:43PM 6 THEY WERE NOT ACTUAL FINANCIAL STATEMENTS?

01:44PM 7 CORRECT.

01:44PM 8 HE UNDERSTOOD THAT.

01:44PM 9 SO SOPHISTICATED INVESTORS, I THINK USING OUR COMMON  
01:44PM 10 SENSE, KNOW THE DIFFERENCE BETWEEN PROJECTIONS AND FINANCIAL  
01:44PM 11 STATEMENTS WHICH REPORT WHAT THE COMPANY ACTUALLY EARNED.

01:44PM 12 THIS IS MR. MOSLEY ON TESTING CAPABILITIES. HE WAS ASKED  
01:44PM 13 THE QUESTION, "YOU WERE TOLD BY MS. HOLMES THAT AT VARIOUS  
01:44PM 14 TIMES IT COULD NOT DO ALL OF THE TESTS; CORRECT?"

01:44PM 15 HE SAYS ON THE STAND AT TRIAL HERE, "I WAS NOT TOLD THAT."

01:44PM 16 AND THEN IT GOES ON.

01:44PM 17 "SO MR. MOSLEY, FROM YOUR DEPOSITION," SO HE HAD PRIOR  
01:44PM 18 TESTIMONY UNDER OATH IN A DEPOSITION, "FROM YOUR DEPOSITION  
01:44PM 19 YOU'LL SEE THE QUESTION PUT TO YOU AT THIS TIME WAS: SO AT  
01:44PM 20 SOME POINT ELIZABETH TOLD YOU THAT THERANOS COULDN'T DO ALL OF  
01:44PM 21 THE TESTS THAT PATIENTS MIGHT ORDER; IS THAT RIGHT?

01:44PM 22 "DO YOU SEE THAT?

01:44PM 23 "ANSWER: I DO SEE THAT.

01:44PM 24 "QUESTION: AND THEN YOU ANSWER I BELIEVE I WAS TOLD THAT  
01:45PM 25 AT THAT -- AT VARIOUS TIMES IT COULD NOT DO ALL OF THE TESTS.

01:45PM 1 "DO YOU SEE THAT?

01:45PM 2 "YES, I DO.

01:45PM 3 "AND THOSE WERE YOUR WORDS?

01:45PM 4 "THOSE WERE MY WORDS."

01:45PM 5 SO HIS TESTIMONY AT TRIAL THAT HE WASN'T TOLD -- HIS  
01:45PM 6 TESTIMONY AT TRIAL THAT HE GAVE HERE IS DIFFERENT FROM HIS  
01:45PM 7 PRIOR SWORN TESTIMONY WHERE HE ADMITTED THAT HE DID KNOW THAT  
01:45PM 8 THERANOS COULDN'T DO ALL OF THE TESTS.

01:45PM 9 AND AGAIN, YOU KNOW, MEMORIES FADE. THE DEPOSITION WOULD  
01:45PM 10 HAVE BEEN BEFORE TRIAL, OBVIOUSLY, AND IS CLOSER IN TIME. SO  
01:45PM 11 THAT WAS UNDER OATH, AND I THINK THAT'S WHAT WE CAN RELY ON.

01:45PM 12 NOW, ONE THING THAT WAS VERY IMPORTANT TO MR. MOSLEY WAS  
01:45PM 13 THE PHARMACEUTICAL RELATIONSHIPS THAT THERANOS HAD, AND IN  
01:45PM 14 PARTICULAR THIS ISSUE OF PHARMACEUTICAL COMPANIES  
01:45PM 15 COMPREHENSIVELY VALIDATING THE THERANOS TECHNOLOGY.

01:46PM 16 SO MR. MOSLEY TESTIFIED ON DIRECT ABOUT SOMETHING IN  
01:46PM 17 WRITING THAT SAID THERANOS HAS BEEN COMPREHENSIVELY VALIDATED  
01:46PM 18 OVER THE COURSE OF THE LAST SEVEN YEARS BY TEN OF THE FIFTEEN  
01:46PM 19 LARGEST PHARMACEUTICAL COMPANIES.

01:46PM 20 AND THEN THE QUESTION WAS, WAS THAT REPRESENTATION  
01:46PM 21 SIGNIFICANT IN YOUR DECISION TO INVEST?

01:46PM 22 IT WAS.

01:46PM 23 SO MR. MOSLEY SAID THAT WAS AN IMPORTANT FACTOR.

01:46PM 24 WELL, AS I WENT THROUGH YESTERDAY, THERE'S NO EVIDENCE IN  
01:46PM 25 THIS TRIAL THAT MR. BALWANI BELIEVED ANYTHING DIFFERENT OR HAD

01:46PM 1 ANY REASON TO BELIEVE ANYTHING DIFFERENT. HE HAD A  
01:46PM 2 GLAXOSMITHKLINE -- AN EMAIL FROM MS. HOLMES TO A  
01:46PM 3 GLAXOSMITHKLINE PERSON IN DECEMBER OF 2009 THAT SAID THAT  
01:46PM 4 GLAXOSMITHKLINE HAD COMPREHENSIVELY VALIDATED. THERE WAS A  
01:46PM 5 REPORT WITH A GLAXOSMITHKLINE LOGO. IT EXPLAINED THE WORK THAT  
01:46PM 6 GLAXOSMITHKLINE HAD DONE LOOKING AT THE THERANOS TECHNOLOGY.

01:46PM 7 MR. BALWANI GOT THAT. THERE'S NO EVIDENCE IN THIS CASE  
01:47PM 8 THAT HE HAD ANY REASON TO THINK THAT THERE WAS ANYTHING UNTRUE  
01:47PM 9 ABOUT THAT. IN FACT, AS I SAID, MS. HOLMES SENT THAT TO A  
01:47PM 10 GLAXOSMITHKLINE EMPLOYEE NAMED THOMAS BREUER.

01:47PM 11 NOW GO AHEAD A FEW MONTHS IN APRIL OF 2010.  
01:47PM 12 ELIZABETH HOLMES SENDS ADDITIONAL REPORTS NOT ONLY TO  
01:47PM 13 GLAXOSMITHKLINE, BUT ALSO TO SCHERING-PLOUGH AND PFIZER TO  
01:47PM 14 WALGREENS AND THE GOVERNMENT CLAIMS THAT SOMEHOW MR. BALWANI  
01:47PM 15 SHOULD HAVE COMPARED A DOCUMENT THAT HE HAD A MONTH BEFORE IN  
01:47PM 16 HIS INBOX AND PARSED IT AND MAYBE DONE SOME KIND OF RED LINE  
01:47PM 17 COMPARISON AND FIGURED OUT THAT THERE WAS SOME DIFFERENCE, AND  
01:47PM 18 THAT DOESN'T MAKE ANY SENSE AND I EXPLAINED THAT YESTERDAY.

01:47PM 19 BUT, IN ADDITION, THE GOVERNMENT DIDN'T EVEN TALK ABOUT  
01:47PM 20 ALL OF THE OTHER PHARMACEUTICAL RELATIONSHIPS THAT THERANOS HAD  
01:47PM 21 AND WHAT WORK WAS DONE THERE.

01:48PM 22 SO, MR. MOSLEY SAID THAT HE DID RELY ON THIS COMPREHENSIVE  
01:48PM 23 VALIDATION. IN FACT, IN THIS MEMO HE WROTE FOR DR. KISSINGER,  
01:48PM 24 IF YOU LOOK AT THAT, YOU'LL SEE THAT HE SPENDS QUITE A BIT OF  
01:48PM 25 TIME TALKING ABOUT PFIZER.

01:48PM 1 THAT IS NOT MR. BALWANI'S ISSUE. THERE'S NO REASON TO  
01:48PM 2 THINK THAT HE'S COMMITTING FRAUD, THERE'S NO EVIDENCE THAT HE'S  
01:48PM 3 COMMITTING FRAUD, MISREPRESENTING TO PEOPLE LIKE MR. MOSLEY  
01:48PM 4 THAT THERE ARE THESE PHARMACEUTICAL VALIDATIONS.

01:48PM 5 STARTING WITH GLAXOSMITHKLINE, MR. BALWANI HAD EVERY  
01:48PM 6 REASON TO THINK THAT WAS TRUE, JUST LIKE MR. MOSLEY THOUGHT  
01:48PM 7 THAT THAT WAS TRUE.

01:48PM 8 OKAY. I WANT TO SWITCH TO ANOTHER INVESTOR NAMED  
01:48PM 9 PATRICK MENDENHALL.

01:48PM 10 MR. MENDENHALL TESTIFIED THAT HE'S NOT A SUBJECT OF A  
01:48PM 11 PARTICULAR COUNT IN THE INDICTMENT, BUT HE'S ANOTHER INVESTOR  
01:48PM 12 IN THERANOS AND YOU HEARD HIS TESTIMONY AT TRIAL.

01:48PM 13 AND THE THING THAT I WANT TO DISCUSS ABOUT MR. MENDENHALL  
01:49PM 14 IS THAT THERE'S A CERTAIN EMAIL THAT HE WROTE THAT IS SUPPOSED  
01:49PM 15 TO BE A RECITATION OF WHAT MR. MENDENHALL HEARD FROM  
01:49PM 16 MR. BALWANI DURING ABOUT A 45 MINUTE PHONE CALL.

01:49PM 17 SO THE GOVERNMENT SPENT SOME TIME ON THIS SO I WANT TO  
01:49PM 18 SPEND SOME TIME ON IT, TOO, TO EXPLAIN SOME OF THE STATEMENTS  
01:49PM 19 IN THERE.

01:49PM 20 SO THERE WAS A PHONE CALL IN DECEMBER OF 2013 WITH  
01:49PM 21 MR. BALWANI, BETWEEN MR. BALWANI AND MR. MENDENHALL, AND THEN  
01:49PM 22 MR. MENDENHALL WROTE THE MEMO. AND THAT MEMO IS EXHIBIT 4059.

01:49PM 23 SO LET'S START WITH THE FIRST SET OF BULLET POINTS.

01:49PM 24 SO THESE ARE THINGS THAT ARE IN THE MEMO AND THEY'RE KIND  
01:49PM 25 OF CALLED OUT THERE IN THE SCREEN SO YOU CAN SEE THEM A LITTLE

01:49PM 1 BIT BIGGER AND I WANT TO GO THROUGH THOSE STATEMENTS.

01:49PM 2 SO MR. MENDENHALL REPORTED ABOUT HIS CONVERSATION WITH  
01:49PM 3 MR. BALWANI THAT THE SCIENCE, QUOTE-UNQUOTE, BEHIND THERANOS IS  
01:49PM 4 COMPLETE; NO NEW SCIENCE IS NEEDED; AND NO NEW INVENTION IS  
01:50PM 5 NEEDED.

01:50PM 6 SO IF THAT IS SUPPOSED TO BE TAKEN AS WE'RE NOT DOING  
01:50PM 7 ANYTHING MORE, WE'RE NOT DOING ANYMORE RESEARCH AND  
01:50PM 8 DEVELOPMENT, IT'S SORT OF LIKE, YOU KNOW, AT SOME POINT IN THE  
01:50PM 9 1800'S SOMEONE INVENTED THE RAILROAD TIE, RIGHT, THE THINGS  
01:50PM 10 THAT HOLD THE TRACKS TOGETHER FOR RAILROADS, AND THEY REALLY  
01:50PM 11 HAVEN'T CHANGED MUCH. IF YOU GO TO THE TRAIN TRACKS AROUND  
01:50PM 12 TOWN, YOU WILL SEE BASICALLY THE SAME KIND OF RAILROAD TIE  
01:50PM 13 THAT'S EXISTED FOR ALMOST 200 YEARS.

01:50PM 14 THAT'S A DEVICE IS THAT IS FULLY SET AND THERE'S REALLY  
01:50PM 15 NOTHING YOU CAN DO TO IMPROVE IT. MAYBE THERE IS. BUT JUST  
01:50PM 16 THINK ABOUT THAT, STILL A WOODEN PIECE OF WOOD THAT YOU CAN  
01:50PM 17 NAIL A RAILROAD TRACK ON TO.

01:50PM 18 BUT WHEN YOU'RE TALKING ABOUT TECHNOLOGY, OF COURSE  
01:50PM 19 THERE'S GOING TO BE RESEARCH AND DEVELOPMENT.

01:50PM 20 WE USED THE ANALOGY OF THE IPHONE. APPLE MADE AN IPHONE7  
01:51PM 21 OR AN IPHONE8 AND EVENTUALLY THEY'RE WORKING ON THE IPHONE10.

01:51PM 22 SO NO NEW SCIENCE, IT CAN'T MEAN -- AND I'LL SHOW YOU THE  
01:51PM 23 TESTIMONY ABOUT THIS IN A MINUTE -- BUT IT CAN'T MEAN PENS  
01:51PM 24 DOWN, WE'RE NOT DOING ANYTHING ELSE. WE DON'T NEED TO DO  
01:51PM 25 ANYTHING ELSE.

01:51PM 1 SO MR. MENDENHALL AGREED TO THAT WHEN YOU LOOK AT THE NEXT  
01:51PM 2 TRANSCRIPT. "AS A SOPHISTICATED INVESTOR, DO YOU UNDERSTAND  
01:51PM 3 COMPANIES ARE ALWAYS TRYING TO IMPROVE AND PERFECT THEIR  
01:51PM 4 PRODUCTS?"

01:51PM 5 HE SAID "I WOULD BELIEVE SO. I MEAN, I WOULD THINK THAT  
01:51PM 6 IF YOU CAN IMPROVE IT, YOU WOULD."

01:51PM 7 SO HE UNDERSTANDS THAT, AND THEN THERE'S THE IPHONE  
01:51PM 8 ANALOGY.

01:51PM 9 MR. LUCAS. "AND SO YOU UNDERSTAND THAT EVEN IF A COMPANY  
01:51PM 10 HAS DEVELOPED SOME TECHNOLOGY, IT'S GOING TO, IF IT'S SMART,  
01:51PM 11 CONTINUE TO IMPROVE AND WORK ON THE TECHNOLOGY; RIGHT?"

01:51PM 12 HE SAID CORRECT.

01:51PM 13 MR. MOSLEY, THE SAME THING. GOING TO FURTHER ADVANCE ITS  
01:51PM 14 TECHNOLOGY.

01:51PM 15 WHEN YOU GO TO THE RESEARCH AND DEVELOPMENT PROJECTIONS  
01:52PM 16 THAT WERE PROVIDED, YOU CAN SEE THERE'S AN ENORMOUS AMOUNT OF  
01:52PM 17 RESEARCH AND DEVELOPMENT EXPENSE THAT IS REVEALED TO INVESTORS,  
01:52PM 18 IN THIS CASE MR. GROSSMAN. SO THERE'S NO SECRET THAT THERANOS  
01:52PM 19 IS GOING TO DO MORE R&D WORK.

01:52PM 20 SO THE SCIENCE IS COMPLETE MEANS THAT MR. BALWANI THINKS  
01:52PM 21 THAT THEY HAVE A DEVICE.

01:52PM 22 AS YOU HEARD EARLIER, DR. GIBBONS NOTIFIED MR. BALWANI  
01:52PM 23 FROM AN EARLY TIME, THEY DEMONSTRATED THESE GREAT CAPABILITIES  
01:52PM 24 ON THE DEVICE. SO THEY HAD THE DEVICE. IT GOT ROBOTIC ARMS  
01:52PM 25 AND DETECTING MACHINES AND IT CAN ANALYZE BLOOD SAMPLES.



01:52PM 1 THEY'VE GOT THAT. THEY'RE USING THAT AT THE TIME THAT

01:52PM 2 MR. BALWANI IS TALKING TO MR. MENDENHALL.

01:52PM 3 BUT IF THAT'S SUPPOSED TO BE TAKEN AS WE'RE NOT GOING TO  
01:52PM 4 DO ANYTHING ELSE EVER, THAT JUST CAN'T BE TRUE LOGICALLY, AND  
01:52PM 5 MR. MENDENHALL DIDN'T UNDERSTAND IT THAT WAY EITHER.

01:53PM 6 MS. PETERSON ALSO UNDERSTOOD THE ENORMOUS AMOUNT OF R&D  
01:53PM 7 EXPENSE THAT THERANOS WAS PROJECTING.

01:53PM 8 THIS IS PART OF AN EMAIL FROM MR. MENDENHALL, HIS POINT  
01:53PM 9 10, THEY SAVED A PHARMA COMPANY \$204 MILLION IN CLINICAL TRIAL  
01:53PM 10 COSTS OVER NINE MONTHS, RIGHT?

01:53PM 11 SO WHAT ABOUT THAT? WELL, HERE'S THE SLIDE, AND THIS IS  
01:53PM 12 THERANOS SAVINGS TO PHARMACEUTICAL COMPANIES. THIS COMES FROM  
01:53PM 13 EXHIBIT 4059, AND THERE'S THIS MCKINSEY REPORT, A CONSULTING  
01:53PM 14 COMPANY, AND IT EXPLAINS THERANOS'S IMPROVEMENT AND THE  
01:53PM 15 PROBABILITY OF SUCCESS IN POINT OF CARE AND 15 TO 80 PERCENT  
01:53PM 16 RESULTS, AND ESTIMATED NET PRESENT VALUE OF ABOUT \$202 MILLION.

01:54PM 17 SO MR. BALWANI HAD A BASIS FOR TALKING ABOUT THE SAVINGS  
01:54PM 18 TO PHARMACEUTICAL COMPANIES. THAT WAS MR. MENDENHALL'S BULLET  
01:54PM 19 NUMBER 10.

01:54PM 20 LET'S GO TO THE NEXT ONE.

01:54PM 21 MR. MENDENHALL'S BULLET NUMBER 12. CURRENT CLINICAL  
01:54PM 22 TRIALS TAKE 6 VIALS AND CAN RUN 10 TO 12 TESTS. THERANOS TAKES  
01:54PM 23 3 DROPS AND CAN RUN 60 TO 70 TESTS.

01:54PM 24 WELL, WE KNOW THAT ADAM ROSENDORFF ALONE SIGNED 57  
01:54PM 25 VALIDATION REPORTS. WHAT DOES THIS MEAN? DID MR. MENDENHALL

01:54PM 1 WRITE THIS DOWN EXACTLY HOW MR. BALWANI SAID IT?

01:54PM 2 BUT WE KNOW THAT THERANOS CAN AT THIS POINT, NOT ONLY DID  
01:54PM 3 DR. ROSENDORFF SIGN 57 VALIDATION REPORTS OVER TIME, BUT THEY  
01:54PM 4 HAD DONE LOTS OF ASSAY DEVELOPMENT WORK AS WE HAVE HEARD. SO,  
01:54PM 5 YEAH, THEY CAN RUN 60 TO 70 TESTS.

01:54PM 6 LET'S GO TO BULLET 18 FROM MR. MENDENHALL. THERANOS IS  
01:55PM 7 HEAVILY PATENTED TECHNOLOGY AND INTELLECTUAL PROPERTY IS GEARED  
01:55PM 8 UP TO PROTECT IT. WE KNOW THAT'S TRUE. YOU'VE SEEN ONE OF THE  
01:55PM 9 PATENT APPLICATIONS ABOUT THEIR MODIFIED PREDICATES.

01:55PM 10 BULLET NUMBER 20. THEY ARE PUBLISHING THEIR PRICES AND  
01:55PM 11 RESULTS. THIS IS A DIRECT ATTACK ON COMPETITION.

01:55PM 12 WE KNOW THAT'S TRUE. WE SAW EVEN FROM THE FIRST WITNESS  
01:55PM 13 IN THIS TRIAL, ERIKA CHEUNG, THAT THERANOS WAS PUTTING THEIR  
01:55PM 14 PRICES OUT THERE, WHICH WAS UNUSUAL. WE'VE HEARD TESTIMONY AT  
01:55PM 15 TRIAL THAT LABS TYPICALLY DIDN'T DO THAT, BUT THAT'S WHAT  
01:55PM 16 THERANOS DID.

01:55PM 17 BULLET NUMBER 2 ON THE FINANCIAL SIDE. MR. MENDENHALL  
01:55PM 18 WROTE THEY, MEANING THERANOS, CAN FUND GROWTH THRU CURRENT  
01:55PM 19 OPERATIONS. NO NEED FOR CAPITAL.

01:55PM 20 WELL, WE KNOW IN DECEMBER OF 2013, WALGREENS AGREED TO  
01:55PM 21 ACCELERATE THE \$75 MILLION INNOVATION FEE SO THAT THERANOS  
01:55PM 22 COULD EXPAND THAT PARTNERSHIP WITH WALGREENS. AND THAT  
01:56PM 23 AMENDMENT TO THE WALGREENS CONTRACT WITH THERANOS WAS ON  
01:56PM 24 DECEMBER 31ST OF 2013.

01:56PM 25 WE KNOW JUST FROM COMMON SENSE THAT THAT DIDN'T JUST

01:56PM 1 SPRING OUT OF NOTHING ON DECEMBER 31ST. BEFORE WALGREENS IS  
01:56PM 2 GOING TO COMMIT \$75 MILLION, THERE'S GOING TO BE A DISCUSSION,  
01:56PM 3 AND THIS DISCUSSION WITH MENDENHALL WAS JUST A SHORT TIME  
01:56PM 4 BEFORE THAT SIGNED COMMITMENT TO \$75 MILLION IN DECEMBER OF  
01:56PM 5 2013.

01:56PM 6 SO, YEAH, THEY'RE GETTING \$75 MILLION FROM WALGREENS.  
01:56PM 7 THAT'S WHAT IT WAS.

01:56PM 8 AND AS YOU KNOW, AND I EXPLAINED WHEN I WAS TALKING ABOUT  
01:56PM 9 CHRIS LUCAS, ALL OF THESE INVESTORS WHO HAD ORIGINALLY INVESTED  
01:56PM 10 IN 2006 HAD THE RIGHT, THEY DIDN'T HAVE TO INVEST AGAIN, BUT  
01:56PM 11 THERANOS HAD TO GIVE THEM THE OPPORTUNITY.

01:56PM 12 MR. JHAVERI, ABOUT THE INNOVATION FEE, WALGREENS AGREES TO  
01:56PM 13 PAY THE THERANOS INNOVATION FEE FOR UP TO 100 MILLION. SO HE'S  
01:57PM 14 JUST TALKING ABOUT THE DOCUMENT.

01:57PM 15 SO HAN SPIVEY, WHO WAS ONE OF THE EARLY WITNESSES, AND SHE  
01:57PM 16 SAID THAT THE MONEY FROM WALGREENS, THE INNOVATION FEE MONEY,  
01:57PM 17 WAS FROM AN ACCOUNTING PERSPECTIVE CALLED DEFERRED REVENUE.  
01:57PM 18 AND THEN SHE EXPLAINED THERE ARE SOME ACCOUNTING RULES ABOUT  
01:57PM 19 WHEN A COMPANY CAN RECOGNIZE THE REVENUE OR NOT.

01:57PM 20 AND THAT'S HER JOB. SHE'S AN ACCOUNTANT.

01:57PM 21 BUT I JUST WANT TO POINT OUT THAT THERANOS HAD THE CASH.  
01:57PM 22 WHETHER IT WAS DEFERRED REVENUE OR NOT, THE CASH CAME IN THE  
01:57PM 23 DOOR AND THEY HAD THAT.

01:57PM 24 SO IN EARLY JANUARY, THAT'S THE SPREADSHEET.  
01:57PM 25 EXHIBIT 5172, THAT'S AT THE BOTTOM. THAT'S THE SPREADSHEET

01:57PM 1 SHOWING THE CASH BALANCE SPREADSHEET, 25 MILLION COMES IN THE  
01:57PM 2 DOOR IN EARLY JANUARY OF 2013.

01:57PM 3 AND IF YOU GO TO THE NEXT PAGE.

01:57PM 4 THE 75 MILLION ACTUALLY CAME IN IN EARLY JANUARY OF '14,  
01:58PM 5 RIGHT AFTER WALGREENS COMMITMENT.

01:58PM 6 GENETIC AND HUMAN GENOME WORK. SO THIS IS ANOTHER ONE OF  
01:58PM 7 THE BULLET POINTS, OR ANOTHER ONE OF THE PARAGRAPHS IN  
01:58PM 8 MR. MENDENHALL'S EMAIL. HE SAYS, "THEY ARE NOW DOING GENETIC  
01:58PM 9 AND HUMAN GENOME WORK THAT WILL PUSH HEALTH CARE INTO AREAS NOT  
01:58PM 10 CURRENTLY ATTAINABLE."

01:58PM 11 WELL, THAT'S ALSO TRUE. HERE'S THE EMAIL UPDATE ABOUT THE  
01:58PM 12 THERANOS NUCLEIC ACID AMPLIFICATION FROM PRANAV PATEL JUST A  
01:58PM 13 FEW DAYS REALLY BEFORE MR. BALWANI TALKS TO MR. MENDENHALL.  
01:58PM 14 AND THEY'RE WORKING TOWARDS THE GOAL OF ASSAY DEVELOPMENT, 76  
01:58PM 15 ASSAYS ARE COMPLETE, 16 ARE IN PROGRESS AND SO FORTH. WE'VE  
01:58PM 16 SEEN THIS EMAIL BEFORE.

01:58PM 17 BUT THIS IS ABOUT THE NUCLEIC ACID AMPLIFICATION. SO THAT  
01:58PM 18 WAS THE BASIS FOR MR. BALWANI'S STATEMENT.

01:58PM 19 SO THESE WERE MR. BALWANI TRYING TO BE AS ACCURATE AS HE  
01:59PM 20 COULD. AND AS MR. MENDENHALL SAID, HE WAS TRYING TO BE PRECISE  
01:59PM 21 AND BRIEF, BUT HE EXPLAINED IT AS HE UNDERSTOOD IT.

01:59PM 22 AND THE THING THAT THE GOVERNMENT REALLY POINTS TO IS THIS  
01:59PM 23 NO NEW SCIENCE NEEDED, BUT I'VE ALREADY TALKED ABOUT THAT.  
01:59PM 24 THAT DOESN'T MAKE SENSE AS A FRAUDULENT MISREPRESENTATION WHEN  
01:59PM 25 YOU'RE DEALING WITH SOPHISTICATED INVESTORS WHO KNOW, AND

01:59PM 1 THERANOS HAD DISCLOSED TO INVESTORS, THAT THEY'RE GOING TO HAVE  
01:59PM 2 A LOT OF R&D. WHY WOULD YOU DO THAT IF IT WAS GOING TO BE PENS  
01:59PM 3 DOWN ON THE RESEARCH?

01:59PM 4 LET'S TALK ABOUT ALAN EISENMAN. SO I'M JUST GOING THROUGH  
01:59PM 5 THE INVESTORS NOW OBVIOUSLY.

01:59PM 6 MR. EISENMAN IS A SUBJECT OF THE COUNT IN THE INDICTMENT.  
01:59PM 7 AND HIS INVESTMENT WAS ON DECEMBER 30TH OF 2013.

01:59PM 8 AS MR. LUCAS TESTIFIED, EVERYONE WHO ORIGINALLY INVESTED  
01:59PM 9 IN 2006 WAS IN THE SAME BOAT. AND MR. EISENMAN, AS YOU MAY  
01:59PM 10 REMEMBER, WAS A VERY PERSISTENT INVESTOR WHO LIKED TO ASK A LOT  
02:00PM 11 OF QUESTIONS, AND IF HE WASN'T GETTING AN ANSWER, HE WOULD GO  
02:00PM 12 TO DIFFERENT PEOPLE TO GET THE ANSWER, AND HE WAS SOMETIMES  
02:00PM 13 FRUSTRATING TO DEAL WITH, AND WE CAN SEE THAT FROM THE EMAIL  
02:00PM 14 RECORD.

02:00PM 15 BUT THEY HAD TO GIVE HIM THE OPPORTUNITY TO INVEST,  
02:00PM 16 WHETHER THEY LIKED HIM OR NOT, AND HE WAS ONE OF THOSE  
02:00PM 17 INVESTORS WHO ORIGINALLY INVESTED IN 2006, SO HE HAD THE RIGHT  
02:00PM 18 TO GET IT. THERE WAS NOTHING MORE THAN THAT.

02:00PM 19 IF THEY COULD HAVE -- AND YOU'LL SEE IN A MINUTE, IF THEY  
02:00PM 20 COULD HAVE NOT HAD TO DEAL WITH MR. EISENMAN ANYMORE, I THINK  
02:00PM 21 THEY WOULD HAVE PREFERRED THAT. BUT MR. EISENMAN HAD THE RIGHT  
02:00PM 22 AND HE WANTED TO GET ON BOARD THE WALGREENS ROLLOUT TRAIN AS  
02:00PM 23 WELL, ALONG WITH THE OTHERS.

02:00PM 24 NOW, IN THE EARLIER INVESTMENT, THE ONLY PERSON THAT HE  
02:00PM 25 WAS INTERACTING WITH WAS ELIZABETH HOLMES INITIALLY.

02:00PM 1 IN 2010 MR. EISENMAN UNDERSTANDS THAT THERANOS IS AN EARLY  
02:00PM 2 STAGE LIFE SCIENCES STARTUP THAT HAS IMMENSE RISK AND  
02:01PM 3 UNPREDICTABILITY. THIS MAY NOT CHANGE FOR YEARS TO COME.

02:01PM 4 AND THEN THE NEXT SLIDE.

02:01PM 5 IF YOU LOOK AT THESE EXHIBIT NUMBERS, I'LL JUST LEAVE IT  
02:01PM 6 ON THE SCREEN FOR A MINUTE, 14103, 12285, 14224, AND SO FORTH,  
02:01PM 7 THOSE EXHIBIT NUMBERS ARE ALL OF MR. -- NOT ALL, BUT SOME OF  
02:01PM 8 MR. EISENMAN'S PERSISTENT COMMUNICATIONS WHERE HE UNDERSTANDS  
02:01PM 9 HE DOESN'T HAVE ANY RIGHT TO GET INFORMATION, BUT HE'S SAYING  
02:01PM 10 IT NONETHELESS.

02:01PM 11 AT ONE POINT HE'S TALKING ABOUT IPO'S, BUT HE'S BEING TOLD  
02:01PM 12 THERE'S NOT GOING TO BE AN IPO. SO HE'S JUST BADGERING NOT  
02:01PM 13 ONLY THERANOS, MS. HOLMES AND MR. BALWANI, BUT OTHERS, TOO,  
02:01PM 14 WHICH YOU'LL SEE.

02:01PM 15 IN FACT, WHEN YOU GO THROUGH THOSE EXHIBITS, IF YOU DO,  
02:01PM 16 YOU'LL SEE THAT THERE'S THIS ONE EMAIL WHERE HE PUTS IN ALL  
02:02PM 17 CAPS TO MS. HOLMES'S ADMINISTRATIVE ASSISTANT, HE PUTS IN ALL  
02:02PM 18 CAPS, CAN YOU PLEASE RESPOND TODAY IN ALL CAPS.

02:02PM 19 AND YOU MAY REMEMBER THE QUESTION THAT MY COLLEAGUE,  
02:02PM 20 MS. WALSH ASKED, ISN'T THAT YELLING IN AN EMAIL WHEN YOU PUT  
02:02PM 21 THAT IN ALL CAPS?

02:02PM 22 AND HE SAID NO, HE DIDN'T KNOW THAT.

02:02PM 23 BUT THAT'S WHAT HE DID.

02:02PM 24 IF YOU GO TO THE NEXT SLIDE.

02:02PM 25 NANCY MINNIG WAS AN ASSISTANT FOR DON LUCAS. THIS WAS THE

02:02PM 1 BOARD MEMBER. DON LUCAS WAS ON THE BOARD. AND HE WAS TRYING  
02:02PM 2 TO GET INFORMATION FROM DON LUCAS AS WELL.

02:02PM 3 LET'S GO TO THE NEXT SLIDE.

02:02PM 4 DON LUCAS DECLINED TO COMMUNICATE WITH HIM.

02:02PM 5 SO THEN HE REACHED OUT LATER TO BILL FRIST, THE FORMER  
02:02PM 6 SENATE MAJORITY LEADER AND HEART SURGEON, WHO IS ON THERANOS'S  
02:02PM 7 BOARD. SO HE REACHED OUT TO SENATOR FRIST, AND ULTIMATELY  
02:02PM 8 SENATOR FRIST STOPPED COMMUNICATING WITH HIM AS WELL BECAUSE  
02:02PM 9 PEOPLE FOUND MR. EISENMAN FRUSTRATING.

02:03PM 10 LET'S GO TO THE NEXT SLIDE.

02:03PM 11 THAT'S THE DOCUMENT THAT I EXPLAINED A MINUTE AGO WHERE  
02:03PM 12 2006 INVESTORS HAD THIS RIGHT TO PARTICIPATE.

02:03PM 13 GO TO THE NEXT ONE.

02:03PM 14 NOW, THIS IS AN INTERESTING EXCHANGE BECAUSE MR. EISENMAN  
02:03PM 15 WAS ASKED, DID YOU END UP SPEAKING TO MR. BALWANI ON THAT DATE?

02:03PM 16 THIS IS ABOUT A DECEMBER 2013 COMMUNICATION BETWEEN  
02:03PM 17 MR. EISENMAN AND MR. BALWANI.

02:03PM 18 AND THEN MR. EISENMAN SAYS, DO YOU HAVE A NOTE THAT I  
02:03PM 19 CAN --

02:03PM 20 AND THE QUESTION IS, NO. I'M JUST ASKING YOU IF YOU  
02:03PM 21 REMEMBER RECEIVING ANY IMPORTANT FACTS ABOUT THE COMPANY DURING  
02:03PM 22 THAT PARTICULAR CALL?

02:03PM 23 THIS IS ON DIRECT, RIGHT?

02:03PM 24 ANSWER, MY RECOLLECTION IS THAT IT WAS A GENERAL CALL JUST  
02:03PM 25 RATIFYING ALL OF THESE THINGS THAT I HAD LEARNED FROM

02:03PM 1 PAT MENDENHALL AND FROM THE EMAIL THAT I GOT FROM THE COMPANY  
02:03PM 2 GENERALLY THAT THE TECHNOLOGY WORKED, THAT THIS WAS FOR GROWTH  
02:04PM 3 CAPITAL.

02:04PM 4 SO HE'S CLAIMING THAT HE HAD THIS CALL WITH MR. BALWANI  
02:04PM 5 AND MR. BALWANI TOLD HIM THAT THE TECHNOLOGY WORKED, RIGHT?

02:04PM 6 NOW, OF COURSE, AS I EXPLAINED BEFORE, IF MR. BALWANI SAID  
02:04PM 7 THAT, THAT WOULD BE, FROM MR. BALWANI'S PERSPECTIVE, A TRUE  
02:04PM 8 STATEMENT.

02:04PM 9 BUT LET'S GO TO WHAT HAPPENED WITH MR. EISENMAN.

02:04PM 10 SO THEN HE'S ASKED ON CROSS, DID HE TAKE NOTES OF PHONE  
02:04PM 11 CALLS?

02:04PM 12 AND HE SAID YES, RIGHT, HE DID.

02:04PM 13 AND TO MAKE SURE HE GETS THEIR WORDS DOWN?

02:04PM 14 AND HE SAYS CORRECT.

02:04PM 15 AND THEN THE QUESTION IS -- HE'S HANDED A DOCUMENT AND  
02:04PM 16 ASKED, DOES THIS CONTAIN ALL OF YOUR NOTES?

02:04PM 17 HE SAYS RIGHT.

02:04PM 18 THERE'S NOTHING MISSING FROM IT?

02:04PM 19 HE AGREES WITH THAT.

02:04PM 20 BECAUSE YOU TURNED ALL OF THESE OVER TO THE GOVERNMENT?

02:04PM 21 HE SAYS RIGHT.

02:04PM 22 AND THEN HE'S ASKED TO LOOK THROUGH THESE NOTES, THIS  
02:04PM 23 COMPLETE COLLECTION OF NOTES, TO SEE IF THERE'S ANY NOTE  
02:04PM 24 REFLECTING THIS TELEPHONE CALL WITH MR. BALWANI IN LATE  
02:04PM 25 DECEMBER 2013.



02:04PM 1 AND HE LOOKS THROUGH IT. THERE'S A PAUSE.

02:04PM 2 AND HE SAYS IT'S APPARENTLY NOT WRITTEN DOWN IN MY NOTES.

02:05PM 3 WELL, HE WAS SAYING IT ON THE STAND, BUT IT'S NOT IN HIS  
02:05PM 4 NOTES THAT ARE SUPPOSED TO BE COMPREHENSIVE.

02:05PM 5 GO TO THE NEXT SLIDE.

02:05PM 6 AND JUST TO MAKE SURE THAT THE QUESTION IS ANSWERED, DO  
02:05PM 7 YOU HAVE A SPECIFIC RECOLLECTION OF MR. BALWANI TELLING YOU IN  
02:05PM 8 THAT PHONE CALL IN DECEMBER OF 2013 ANYTHING ABOUT THERANOS  
02:05PM 9 TECHNOLOGY OR THERANOS ACTIVITIES?

02:05PM 10 DESPITE WHAT HE SAID ON DIRECT, HE HAD TO ADMIT THAT HE  
02:05PM 11 DOES NOT HAVE A SPECIFIC RECOLLECTION.

02:05PM 12 SO THIS IS JUST AN EXAMPLE OF HOW PEOPLE, MAYBE NATURALLY,  
02:05PM 13 YEARS AFTER THE FACT HAVE DIFFERENT MEMORIES THAN WHAT  
02:05PM 14 OCCURRED. THEY SAY THINGS ON THE STAND, AT THIS POINT THEY  
02:05PM 15 HAVE, YOU KNOW, A BIT OF A BIAS BECAUSE, YOU KNOW, SOMETIMES  
02:05PM 16 EVEN A LOT OF BIAS BECAUSE OF WHAT HAPPENED, THEY DID LOSE  
02:05PM 17 MONEY, MAYBE THEY'RE UPSET ABOUT THAT, AND HERE THEY'RE IN A  
02:05PM 18 FEDERAL CRIMINAL TRIAL AND IT'S LIKE A PILING ON EFFECT WHERE  
02:05PM 19 EVERYONE WANTS TO SAY I WAS FOOLED OR I DIDN'T PROVE ANYTHING  
02:05PM 20 OR I DIDN'T DO ANYTHING, AND MR. EISENMAN IS NO DIFFERENT.

02:05PM 21 BUT THAT'S WHY IT'S SO IMPORTANT TO LOOK AT THE  
02:06PM 22 CONTEMPORANEOUS DOCUMENTS IN THIS CASE, AND THAT'S WHY, YOU  
02:06PM 23 KNOW, WE'VE SPENT QUITE A LONG TIME NOT ONLY DURING TRIAL WITH  
02:06PM 24 THE TESTIMONY, BUT HERE AT CLOSING NOW FOR THE THIRD DAY GOING  
02:06PM 25 THROUGH THESE EMAILS TO SHOW YOU, THE JURY, WHAT REALLY

02:06PM 1 HAPPENED WITH ALL OF THE CONTEMPORANEOUS DOCUMENTS AND NOT JUST  
02:06PM 2 RELYING ON PEOPLE'S MEMORIES, PEOPLE WHO HAVE AGENDAS AND  
02:06PM 3 BIASES.

02:06PM 4 LET'S TALK A LITTLE BIT MORE ABOUT MR. EISENMAN.

02:06PM 5 SO HE SIGNED THE SAME AGREEMENT THAT I'VE BEEN TALKING  
02:06PM 6 ABOUT ABOUT THE INVESTMENT BEING SPECULATIVE AND HE COULD  
02:06PM 7 AFFORD TO LOSE EVERYTHING AND HE KNOWS THE BUSINESS MODEL MIGHT  
02:06PM 8 CHANGE AND THE PROJECTIONS MIGHT CHANGE.

02:06PM 9 HE SIGNS ALL OF THIS, BUT HE CLAIMS HE DIDN'T REALLY MEAN  
02:06PM 10 IT WHEN HE SIGNED IT. HE THOUGHT IT WAS JUST SOMETHING THAT HE  
02:06PM 11 HAD TO SIGN, OR IT WAS BOILER PLATE OR SOMETHING OF THAT  
02:06PM 12 NATURE.

02:06PM 13 HE'S A LAWYER. HE'S TRAINED AS A LAWYER. HE DIDN'T  
02:06PM 14 PRACTICE LAW FOR AWHILE. HE DID THAT EARLIER IN HIS LIFE.

02:07PM 15 BUT YOU DON'T SIGN THINGS FOR AN INVESTMENT.

02:07PM 16 AND THE OTHER THING ABOUT MR. EISENMAN, HE INVESTED  
02:07PM 17 \$99,000 IN THIS 2013 ROUND.

02:07PM 18 THE 2006 INVESTMENT, THAT WAS MORE THAN THAT. THAT HAS  
02:07PM 19 NOTHING TO DO WITH MR. BALWANI. THAT'S NOT AT ISSUE IN THIS  
02:07PM 20 CASE.

02:07PM 21 BUT THE 2013 INVESTMENT WAS \$99,000. AND WHEN YOU THINK  
02:07PM 22 ABOUT HOW FRUSTRATING MR. EISENMAN WAS AND HOW DIFFICULT HE WAS  
02:07PM 23 TO DEAL WITH AND EVERYTHING YOU KNOW, DOES IT MAKE ANY SENSE  
02:07PM 24 THAT MR. BALWANI WAS TRYING TO DEFRAUD MR. EISENMAN OUT OF HIS  
02:07PM 25 \$99,000 WHEN THEY HAVE \$75 MILLION COMING IN FROM WALGREENS

02:07PM 1 JUST THAT SAME MONTH?

02:07PM 2 AGAIN, IT'S A MATTER OF USING COMMON SENSE.

02:07PM 3 MR. EISENMAN HAD AN OPPORTUNITY TO SELL HIS SHARES. SO

02:07PM 4 EARLY ON IN 2010, MS. HOLMES -- AND THIS IS BECAUSE

02:07PM 5 MR. EISENMAN IS SO FRUSTRATED ABOUT HE WANTS INFORMATION AND HE

02:08PM 6 KEEPS ASKING THESE QUESTIONS AND HE'S NOT GETTING EVERYTHING HE

02:08PM 7 HAVE WANTS SO THERE WAS MAYBE MUTUAL FRUSTRATION.

02:08PM 8 MS. HOLMES SAYS "GIVEN YOUR FRUSTRATION LEVEL AND OUR

02:08PM 9 FRUSTRATION LEVEL WITH THIS INTERACTION, I STRONGLY ENCOURAGE

02:08PM 10 YOU TO RECONSIDER THE OPPORTUNITY I PRESENTED ON OUR LAST CALL

02:08PM 11 TO REALIZE THE RETURN ON YOUR INVESTMENT. WE RECOGNIZE YOU

02:08PM 12 HAVE BEEN AN INVESTOR FOR SOME TIME, AND IF WE PROCEED WITH THE

02:08PM 13 TRANSACTION WE ARE PROPOSING, WE CAN PROVIDE YOU WITH A GREATER

02:08PM 14 THAN FIVE TIMES RETURN ON YOUR INVESTMENT IN THERANOS. PLEASE

02:08PM 15 LET ME KNOW. ELIZABETH."

02:08PM 16 SO THEN IF YOU GO TO THE NEXT PAGE, MS. HOLMES TELLS HIM

02:08PM 17 IN JUNE OF 2018 -- I'M SORRY, JUNE OF 2010, "WE ARE WORKING ON

02:08PM 18 PROCESSING YOUR REQUEST TO GET YOU THE PAPERS ON THE

02:08PM 19 TRANSACTION TO SELL YOUR SHARES."

02:08PM 20 AND THEN MR. EISENMAN CLAIMED ON THE STAND, WELL, MAYBE

02:08PM 21 THIS WASN'T SERIOUS.

02:09PM 22 BUT HE SAYS IN JULY OF 2010, "I HAVEN'T MADE A DECISION

02:09PM 23 WHETHER TO SELL STOCK." AND HE WANT TO SCHEDULE QUARTERLY

02:09PM 24 UPDATES.

02:09PM 25 SO HE IS WAS NOT SATISFIED. HE WANTS MORE INFORMATION

02:09PM 1 BECAUSE HE THINGS, WELL, MAYBE I'M LEAVING MONEY ON THE TABLE,  
02:09PM 2 MAYBE I'LL MAKE EVEN MORE MONEY.

02:09PM 3 AND HE HAD TO ADMIT THAT IF HE HAD DONE THAT BACK IN 2010,  
02:09PM 4 HE WOULD HAVE MADE \$25 MILLION.

02:09PM 5 IF YOU HAD SOLD YOUR STOCK PURSUANT TO THIS OFFER, YOU  
02:09PM 6 WOULD HAVE MADE ABOUT 25 MILLION?

02:09PM 7 AND HE FIGHTS AND HE SAYS MAYBE IT'S NOT RELEVANT, AND  
02:09PM 8 THEN EVENTUALLY AFTER A STRUGGLE HE SAYS, YES, THE MATH IS  
02:09PM 9 CORRECT, \$25 MILLION.

02:09PM 10 THERE ARE OTHER OPPORTUNITIES LATER FOR MR. EISENMAN TO  
02:09PM 11 SELL HIS SHARES. I WON'T SPEND A LONG TIME ON THIS, BUT THIS  
02:09PM 12 IS JUST AN INTERACTION WITH PEOPLE WHO OPERATE LIKE SECONDARY  
02:09PM 13 MARKETS FOR PRIVATE COMPANIES LIKE THERANOS.

02:09PM 14 AS YOU HEARD DURING TRIAL, THERANOS WAS NOT A PUBLIC  
02:09PM 15 COMPANY SO YOU CANNOT JUST GO TO THE NEW YORK STOCK EXCHANGE,  
02:10PM 16 OR SOMETHING LIKE THAT, AND BUY SHARES.

02:10PM 17 BUT THERE ARE PEOPLE WHO HAVE SECONDARY MARKETS AND  
02:10PM 18 MR. EISENMAN WAS DEALING WITH SOME OF THEM. AND THAT'S WHAT  
02:10PM 19 THIS EMAIL IS ABOUT. HE WANTS TO SELL HIS SHARES IN SEPTEMBER  
02:10PM 20 OF 2015.

02:10PM 21 AND THEN HE'S HAVING DIFFICULTY WITH THE PEOPLE WHO RUN  
02:10PM 22 THE SECONDARY MARKET BECAUSE HE'S TALKING ABOUT NOT HAVING  
02:10PM 23 ENOUGH INFORMATION AND IT'S SORT OF THE SAME THING AGAIN WITH  
02:10PM 24 MR. EISENMAN. HE NEEDS ACCURATE INFORMATION, WHAT IS IN THAT  
02:10PM 25 PRICE, AND PEOPLE ARE TRYING TO HELP HIM, BUT HE'S PRETTY

02:10PM 1 DEMANDING.

02:10PM 2 LET'S GO TO THIS EMAIL. SO THIS IS AN EMAIL BETWEEN  
02:10PM 3 MR. EISENMAN AND MR. BALWANI.

02:10PM 4 AND MR. EISENMAN -- IF YOU GO TO THE BOTTOM OF THE PAGE,  
02:10PM 5 MR. ALLEN -- HE SAYS, AMONG OTHER THINGS, WHAT IS THE SIZE OF  
02:11PM 6 THIS ROUND, THIS INVESTMENT ROUND? ARE THERE ANY DIRECTORS  
02:11PM 7 PARTICIPATING? AM I CORRECT THAT THERE WILL BE ANOTHER ROUND  
02:11PM 8 OF APPROXIMATELY 200 MILLION IN JANUARY?

02:11PM 9 AND MR. BALWANI SAYS ALAN -- THIS IS BEFORE MR. EISENMAN  
02:11PM 10 INVESTS -- "WE CAN'T ANSWER YOUR QUESTIONS ABOUT DIRECTORS,  
02:11PM 11 OTHER INVESTORS, AND CERTAINLY NOT ABOUT ANY FUTURE INVESTMENT  
02:11PM 12 ROUNDS AND SPECULATE ON WHAT THOSE VALUATIONS MAY BE. THOSE  
02:11PM 13 MAY OR MAY NOT HAPPEN."

02:11PM 14 HE SAYS, "SECONDLY, MY PERSONAL ASSISTANTS ARE NOT PRIVY  
02:11PM 15 TO CONFIDENTIAL FINANCIAL INFORMATION SO PLEASE DON'T LEAVE  
02:11PM 16 MESSAGES WITH THEM ABOUT COMPANY'S FINANCIAL DETAILS AND  
02:11PM 17 ACTIVITIES.

02:11PM 18 "FINALLY, IF YOU CHOOSE TO INVEST, THE SIGNED DOCUMENTS  
02:11PM 19 HAVE TO BE IN BY 12/31."

02:11PM 20 SO THIS DOESN'T SOUND LIKE MR. BALWANI SAYING TO  
02:11PM 21 MR. EISENMAN, YEAH, PLEASE INVEST, YOU KNOW, HERE'S ALL OF THE  
02:11PM 22 GREAT INFORMATION AND LET ME MAKE UP STUFF. YOU KNOW, IF  
02:11PM 23 YOU'RE NOT QUITE SATISFIED, I'LL JUST SAY WHATEVER.

02:11PM 24 HE'S SAY I CAN'T ANSWER THAT QUESTION, CAN'T PROVIDE THE  
02:12PM 25 INFORMATION. IF YOU CHOOSE TO INVEST, HERE'S WHAT YOU HAVE TO

02:12PM 1 DO.

02:12PM 2 SO AS I SAID BEFORE, MR. EISENMAN IS JUST BEING GIVEN THIS  
02:12PM 3 OPPORTUNITY BECAUSE THERANOS HAS TO DO IT BASED ON THE PREVIOUS  
02:12PM 4 CONTRACTUAL COMMITMENT.

02:12PM 5 BUT WE KNOW THAT MR. EISENMAN SPECIFICALLY TOLD  
02:12PM 6 MR. BALWANI THAT HE WAS SPECIFICALLY DISCOURAGED FROM  
02:12PM 7 INVESTING.

02:12PM 8 IF YOU GO TO THE NEXT EMAIL, LET'S JUST READ THIS FROM THE  
02:12PM 9 BOTTOM.

02:12PM 10 SO THE EARLIEST EMAIL IN TIME HERE, MR. EISENMAN SAYS ON  
02:12PM 11 JANUARY 21ST, 2015, SO THIS IS A LITTLE OVER A YEAR LATER AFTER  
02:12PM 12 MR. EISENMAN'S INVESTMENT, AND MR. EISENMAN SAYS, ELIZABETH AND  
02:12PM 13 SUNNY, THIS IS THE SECOND GOOGLE ALERT I HAVE RECEIVED RECENTLY  
02:12PM 14 THAT CLAIMS THERANOS COULD BECOME OBSOLETE. CAN WE HAVE A  
02:12PM 15 CATCH UP CALL?

02:12PM 16 AND THEN MR. BALWANI RESPONDS TO HIM THAT SAME DAY. "I  
02:12PM 17 THINK THESE EMAILS ARE BEYOND RIDICULOUS. YES, THERANOS, LIKE  
02:12PM 18 ANY OTHER COMPANY, CAN BECOME OBSOLETE."

02:13PM 19 AND THEN HE SAYS, "YOU CONTINUE TO BOMBARD US WITH EMAILS  
02:13PM 20 AND PHONE CALLS EVEN THOUGH JUST 12 SHORT MONTHS AGO I SPOKE  
02:13PM 21 WITH YOU IN DETAIL THAT YOU WILL NOT GET ANY UPDATES, THAT YOU  
02:13PM 22 SHOULDN'T INVEST, AND THAT MANAGEMENT WILL NOT BE SPENDING ANY  
02:13PM 23 TIME WITH YOU PROVIDING YOU UPDATES AND RESPONDING TO YOUR  
02:13PM 24 EMAILS ABOUT BUSINESS OPERATIONS, STRATEGY AND DETAILS."

02:13PM 25 SO MR. BALWANI IS SPECIFICALLY REMINDING MR. EISENMAN, I

02:13PM 1 TOLD YOU YOU SHOULD NOT TO INVEST.

02:13PM 2 AND LET'S SEE WHAT HAPPENS WHEN MR. EISENMAN RESPONDS. HE  
02:13PM 3 SAYS "SUNNY,

02:13PM 4 "WHEN WE SPOKE SEVERAL MONTHS AGO YOU SAID WE COULD HAVE A  
02:13PM 5 SHORT QUARTERLY CALL. I DON'T THINK THIS IS AN UNREASONABLE  
02:13PM 6 REQUEST.

02:13PM 7 "I HEARD THAT THERE WAS FINANCIAL INFORMATION DISSEMINATED  
02:13PM 8 ON THE JANUARY 2014 ROUND. IF SO, IS THAT SOMETHING THAT YOU  
02:13PM 9 CAN SHARE."

02:13PM 10 NOWHERE IN THIS EMAIL RESPONSE DOES MR. EISENMAN SAY, WHAT  
02:13PM 11 ARE YOU TALKING ABOUT? YOU DIDN'T TELL ME THAT I SHOULDN'T  
02:13PM 12 INVEST. YOU TOLD ME TO INVEST.

02:14PM 13 HE'S GIVEN THAT OPPORTUNITY AND HE SAYS NOTHING ABOUT  
02:14PM 14 THAT. HE DOESN'T DISAGREE WITH THAT.

02:14PM 15 AND IF IT WAS JUST THE ONE EXCHANGE, YOU MIGHT SAY, WELL,  
02:14PM 16 MAYBE HE MISSED THAT OR HE DIDN'T RESPOND TO THAT.

02:14PM 17 BUT HE'S GIVEN ANOTHER OPPORTUNITY.

02:14PM 18 LET'S GO UP THE CHAIN.

02:14PM 19 MR. BALWANI SAYS, "NO ONE FROM THIS COMPANY HAS EVER  
02:14PM 20 COMMITTED TO A SHORT QUARTERLY CALL WITH YOU OR ANY OTHER  
02:14PM 21 INVESTOR SELECTIVELY. I WAS VERY EXPLICITLY DISCOURAGING YOU  
02:14PM 22 FROM INVESTING IN JANUARY OF 2014 AND NO INFORMATION HAS BEEN  
02:14PM 23 DISSEMINATED."

02:14PM 24 IT'S OBVIOUSLY DECEMBER OF '13 BECAUSE THAT'S WHEN  
02:14PM 25 MR. EISENMAN'S INVESTMENT WAS.

02:14PM 1 OKAY. AND THEN MR. EISENMAN HAS HIS SECOND OPPORTUNITY.  
02:14PM 2 HE WRITES, "IT WASN'T A FIRM COMMITMENT, ONLY A COURTESY,"  
02:14PM 3 ABOUT GETTING INFORMATION. "I WOULD HOPE AFTER 9 YEARS THERE  
02:14PM 4 WOULD BE SOMETHING THERANOS COULD SHARE WITH US ON A REGULAR  
02:14PM 5 BASIS. WE HAVE BEEN MORE THAN PATIENT."

02:14PM 6 BUT AGAIN, SECOND OPPORTUNITY, MR. EISENMAN COULD SAY,  
02:14PM 7 WHAT ARE YOU TALKING ABOUT SUNNY? WHY ARE YOU SAYING YOU  
02:14PM 8 DISCOURAGED ME FROM INVESTING? THAT NEVER HAPPENED.

02:15PM 9 HE NEVER SAID THAT. NOT JUST ONCE, BUT TWICE HE HAD THE  
02:15PM 10 OPPORTUNITY.

02:15PM 11 SO WE KNOW THAT'S WHAT HAPPENED. MR. BALWANI SPECIFICALLY  
02:15PM 12 TOLD MR. EISENMAN, WHEN HE WAS INVESTING, DON'T INVEST.

02:15PM 13 AND YOU KNOW WHAT? LOGICALLY THAT MAKES A LOT OF SENSE.  
02:15PM 14 WHY WOULD ANYONE, MR. BALWANI INCLUDED, WANT TO GET  
02:15PM 15 MR. EISENMAN'S 99,000? THINK ABOUT THE TRADE-OFF. YOU GET  
02:15PM 16 \$99,000 FOR AN INVESTMENT FROM EISENMAN, BUT YOU'VE GOT TO DEAL  
02:15PM 17 WITH ALAN EISENMAN FOREVER.

02:15PM 18 SO I DON'T UNDERSTAND LIKE HOW THAT CAN BE A REAL THING.  
02:15PM 19 AND IT MAKES SENSE THAT MR. BALWANI TOLD HIM NOT TO INVEST.

02:15PM 20 AND WHEN YOU THINK ABOUT IT FROM AN INTENT STANDPOINT,  
02:15PM 21 THIS IS THE OPPOSITE OF AN INTENT TO DEFRAUD ALAN EISENMAN OUT  
02:15PM 22 OF ANYTHING. THEY DIDN'T WANT HIS MONEY. THEY DIDN'T WANT HIS  
02:15PM 23 INVESTMENT.

02:15PM 24 HE WAS SIMPLY GIVING HIM AN OPPORTUNITY BECAUSE THEY HAD  
02:15PM 25 TO DO IT. THEY WERE HONORING THEIR CONTRACTUAL COMMITMENT.



02:15PM 1 THAT'S THE THERANOS INVESTORS.

02:15PM 2 AND I WANT TO MOVE TO A TOTALLY DIFFERENT SUBJECT OF  
02:16PM 3 THERANOS PATIENTS.

02:16PM 4 SO IF YOU GO TO SLIDE 506, MR. ALLEN.

02:16PM 5 THE COURT: WHY DON'T WE DO THAT AFTER OUR BREAK?

02:16PM 6 MR. COOPERSMITH: THAT SOUNDS GREAT.

02:16PM 7 JUROR: YOUR HONOR, ONE THING. THE MONITOR HERE IS  
02:16PM 8 NOT WORKING.

02:16PM 9 THE COURT: OKAY. THANK YOU. WE'LL CORRECT THAT  
02:16PM 10 DURING THE BREAK. THANK YOU.

02:16PM 11 WE'LL TAKE 20 MINUTES, PLEASE.

02:16PM 12 (RECESS FROM 2:16 P.M. UNTIL 2:40 P.M.)

02:40PM 13 THE COURT: THANK YOU. PLEASE BE SEATED.

02:40PM 14 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT  
02:40PM 15 ARE PRESENT AGAIN.

02:40PM 16 OUR JURY IS PRESENT AND ALTERNATES.

02:40PM 17 MR. BALWANI IS PRESENT.

02:40PM 18 MR. COOPERSMITH.

02:40PM 19 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

02:40PM 20 OKAY. WELCOME BACK EVERYONE. AS YOU CAN SEE WE'RE MOVING  
02:40PM 21 DOWN THE LIST OF TOPICS, MAYBE NOT QUICKLY, BUT WE ARE MOVING.

02:40PM 22 AND WE'RE NOW ON THE TOPIC OF THERANOS PATIENTS, SO I WANT  
02:40PM 23 TO JUST SPEND A LITTLE BIT OF TIME ON THAT.

02:40PM 24 SO THE FIRST THING, THOUGH, AND THIS RELATES TO THERANOS  
02:41PM 25 PATIENTS, THERE'S A COUNT OF THE INDICTMENT, I THINK IT'S

02:41PM 1 COUNT TWELVE, THAT DEALS WITH THE WIRE TRANSMISSION OF SOME  
02:41PM 2 MONEY TO BUY THE ADVERTISING IN THE PHOENIX, ARIZONA MARKET.

02:41PM 3 AND THE GOVERNMENT DURING THEIR CLOSING SHOWED YOU AN  
02:41PM 4 EMAIL ABOUT THAT, AND MS. SPIVEY TALKED ABOUT THAT EMAIL.

02:41PM 5 THE WIRE TRANSFER OF APPROXIMATELY \$1.2 MILLION, THAT DID  
02:41PM 6 OCCUR, BUT HERE'S WHAT I WANT TO SAY ABOUT THAT COUNT.

02:41PM 7 WE JUST DON'T KNOW MUCH ABOUT IT. SO THE ADVERTISING BUY,  
02:41PM 8 IT'S LIKE AUGUST OF 2015. WE DON'T KNOW WHAT THE AD SAID, WE  
02:41PM 9 DON'T KNOW IF THERE WERE ADS THAT ACTUALLY RAN, WE DON'T KNOW  
02:41PM 10 WHEN AND IF THEY RAN, WE DON'T KNOW WHO LOOKED AT THEM, WE  
02:41PM 11 DON'T KNOW IF ANY OF THE PATIENTS THAT YOU'VE HEARD FROM DURING  
02:42PM 12 TRIAL LOOKED AT THEM.

02:42PM 13 MS. SPIVEY WAS THE ONLY PERSON WHO TESTIFIED ABOUT THEM.  
02:42PM 14 SO WE JUST DON'T KNOW.

02:42PM 15 IT'S PRETTY LATE IN THE DAY. IT'S AT A POINT IN TIME  
02:42PM 16 WHERE THERANOS WAS NOT USING, FOR THE MOST PART, ITS  
02:42PM 17 PROPRIETARY TECHNOLOGY. YOU KNOW, YOU SAW THE EXHIBIT ABOUT  
02:42PM 18 THAT.

02:42PM 19 SO IT'S JUST A COUNT THAT SORT OF DOESN'T HAVE A LOT OF  
02:42PM 20 FACTS BEHIND IT.

02:42PM 21 WHAT I WANT TO SAY ABOUT THAT, YOU KNOW, IN TERMS OF  
02:42PM 22 REASONABLE DOUBT PERSPECTIVE, WHEN YOU DON'T KNOW IF THE ADS  
02:42PM 23 RAN, WHEN THEY RAN, WHO SAW THEM, WHAT THE CONTENT WAS, IF THEY  
02:42PM 24 EVEN RAN AT ALL, FROM A REASONABLE DOUBT PERSPECTIVE, OR FROM  
02:42PM 25 ANY PERSPECTIVE, YOU CAN'T CONVICT ON THAT COUNT.

02:42PM 1 THE GOVERNMENT COULD HAVE BROUGHT IN DETAIL ABOUT WHAT THE  
02:42PM 2 ADS WERE, WHO SAW THEM, WHAT HAPPENED. THAT EMAIL THAT THEY  
02:42PM 3 SHOWED YOU DOESN'T SUPPLY THAT. IT LOOKS LIKE THERE'S SOME  
02:42PM 4 CONTEMPLATION OF RADIO ADVERTISING, SOME OTHER THINGS.

02:42PM 5 BUT THERE'S NOTHING BEYOND THAT. AND SO THAT COUNT SHOULD  
02:43PM 6 BE A PRETTY QUICK DECISION I WOULD THINK WHEN YOU'RE  
02:43PM 7 DELIBERATING.

02:43PM 8 BUT I WANT TO TALK ABOUT THE ACTUAL PATIENTS, THE REAL  
02:43PM 9 SUBSTANCE.

02:43PM 10 AND THE FIRST ONE I WANT TO TALK ABOUT IS BRITTANY GOULD.  
02:43PM 11 AND BRITTANY GOULD YOU HEARD FROM DURING TRIAL. SHE'S NOT A  
02:43PM 12 COUNT IN THE INDICTMENT, BUT SHE WAS A PATIENT WHO GOT A TEST,  
02:43PM 13 A COUPLE OF TESTS AT THERANOS.

02:43PM 14 AND HER DOCTOR WAS DR. AUDRA ZACHMAN, AND THAT'S FROM THE  
02:43PM 15 SOUTHWEST CONTEMPORARY WOMEN'S CLINIC IN PHOENIX, IN THE  
02:43PM 16 PHOENIX AREA.

02:43PM 17 SO, FIRST OF ALL, LET'S JUST TALK ABOUT THE TEST THAT  
02:43PM 18 MS. GOULD GOT. AND THAT'S A TEST -- THIS IS THE HCG ASSAY.  
02:43PM 19 THIS IS THE PREGNANCY TEST THAT WE WERE TALKING ABOUT DURING  
02:43PM 20 TRIAL. THAT TEST WAS ON OCTOBER 2ND OF 2014.

02:43PM 21 AND THEN THE SECOND TEST THAT MS. GOULD GOT WAS ON  
02:44PM 22 OCTOBER 4TH, 2014. AND IT HAS THE EXHIBIT NUMBER IF YOU WANT  
02:44PM 23 TO LOOK AT THOSE REPORTS, THAT'S EXHIBIT 2044 AND EXHIBIT 4242.  
02:44PM 24 SO THOSE WERE THE TWO TESTS.

02:44PM 25 AND YOU CAN SEE WHAT HAPPENED HERE. TEST NUMBER 2 IS

02:44PM 1 REPORTED TO DR. ZACHMAN ON OCTOBER 6TH. THAT'S THAT BLUE  
02:44PM 2 WRITING THAT YOU CAN SEE ON THAT OCTOBER 6TH DATE.

02:44PM 3 BUT TEST NUMBER 1 IS NOT REPORTED UNTIL OCTOBER 8TH.

02:44PM 4 THE TEST NUMBER 2 REPORT SHOWS A VALUE OF 125.58. AND  
02:44PM 5 THAT, DR. ZACHMAN SAID, AND SHE'S RIGHT, THAT'S A VALUE THAT  
02:44PM 6 DOESN'T MAKE SENSE. THAT 125.58 HAS GOT TO BE WRONG.

02:44PM 7 AND WE KNOW IT'S GOT TO BE WRONG BECAUSE WE KNOW THAT  
02:45PM 8 MS. GOULD HAD A VIABLE, SUCCESSFUL PREGNANCY LATER. SO THE  
02:45PM 9 125.58 WOULDN'T MAKE SENSE GIVEN THE PREVIOUS TESTING THAT  
02:45PM 10 MS. GOULD HAD GOTTEN.

02:45PM 11 BUT WHAT HAPPENED? AND WE'LL SEE THIS IN A MINUTE.  
02:45PM 12 THERE'S A DECIMAL PLACE TRANSCRIPTION ERROR WHERE THE 125.58  
02:45PM 13 SHOULD HAVE BEEN REPORTED AS 12,558.

02:45PM 14 AND THAT'S AN ERROR THAT SHOULD NEVER HAPPEN. LABS SHOULD  
02:45PM 15 NEVER MAKE THOSE ERRORS. I THINK EVERYONE SHOULD AGREE ON  
02:45PM 16 THAT.

02:45PM 17 BUT IN THIS TRIAL WE'RE NOT TALKING ABOUT TRANSCRIPTION  
02:45PM 18 ERRORS. WE'RE TALKING ABOUT WHETHER THERE'S SOME FUNDAMENTAL  
02:45PM 19 PROBLEM WITH THE TESTING, NOT TRANSCRIPTION WHERE SOMEONE IN  
02:45PM 20 THE LAB MAKES AN UNFORTUNATE ERROR. BUT IT HAPPENED. THAT'S  
02:45PM 21 THE ERROR.

02:45PM 22 WE ALSO SAW YESTERDAY THAT IN THAT SAME MONTH OF OCTOBER  
02:45PM 23 OF 2014, THERE WAS AN ALTERNATIVE ASSESSMENT PROCEDURE  
02:46PM 24 HEAD-TO-HEAD COMPARISON BETWEEN THERANOS'S HCG TESTING ON  
02:46PM 25 EDISON AND THE FDA APPROVED COMMERCIAL DEVICES, AND THAT PASSED

02:46PM 1 100 PERCENT.

02:46PM 2 SO THERE'S NO REASON WHY -- THERE'S NOT ANY EVIDENCE AT  
02:46PM 3 THIS POINT IN TIME OR AT ANY POINT IN TIME THERE'S SOME  
02:46PM 4 FUNDAMENTAL PROBLEM WITH THE HCG TEST. THERE'S A TRANSCRIPTION  
02:46PM 5 ERROR IN THIS CASE.

02:46PM 6 NOW, AS YOU KNOW FROM YESTERDAY AND FROM HEARING THE  
02:46PM 7 TRIAL, THERE WAS A TIME AT THE END OF MAY OF 2014 WHERE  
02:46PM 8 DR. ROSENDORFF STOPPED HCG TESTING.

02:46PM 9 BUT THEN WE ALSO SAW, ALTHOUGH IT WAS THE DEFENSE THAT HAD  
02:46PM 10 TO SHOW IT TO YOU, THAT DR. ROSENDORFF QUICKLY APPROVED WITHIN  
02:46PM 11 A FEW DAYS HCG TESTING GOING BACK ON EDISON.

02:46PM 12 SO WHEN YOU HAVE THAT SITUATION, THERE'S NO REASON WHY  
02:46PM 13 MR. BALWANI WOULD THINK THAT THERE'S SOME FUNDAMENTAL PROBLEM  
02:46PM 14 WITH HCG TESTING ON EDISON AT THERANOS.

02:46PM 15 BUT IN ANY EVENT, GOING BACK TO THE CHART THAT IS ON THE  
02:46PM 16 SCREEN, MR. -- I'M SORRY, DR. ZACHMAN GOT THIS REPORT FROM  
02:47PM 17 THERANOS WITH THIS UNFORTUNATE DECIMAL PLACE ERROR, SO IT'S  
02:47PM 18 125.58. RIGHTFULLY, SHE WAS CONFUSED ABOUT THAT. IT DIDN'T  
02:47PM 19 MAKE ANY SENSE.

02:47PM 20 WHEN SHE GETS THE SECOND REPORT, THOUGH -- SHE DOESN'T GET  
02:47PM 21 TEST NUMBER 1 UNTIL OCTOBER 8TH. SO A COUPLE OF DAYS LATER,  
02:47PM 22 DR. ZACHMAN GETS THE TEST NUMBER 1 FOR THE FIRST TIME, WHICH IS  
02:47PM 23 THE 12,558, AND THEN SHE GETS TEST NUMBER 2 CORRECTED. SO  
02:47PM 24 THEY'VE CORRECTED THE DECIMAL PLACE ERROR NOW A COUPLE OF DAYS  
02:47PM 25 AND IT'S 12,558.

02:47PM 1 OKAY. DR. ZACHMAN ALSO TESTIFIED, WELL, OKAY, THAT'S  
02:47PM 2 GREAT THAT I GOT A CORRECTED REPORT, BUT IT STILL DOESN'T MAKE  
02:47PM 3 ANY SENSE, IT SHOULD BE DOUBLING.

02:47PM 4 SO FROM TEST NUMBER 1 TO TEST NUMBER 2, THOSE ARE TWO DAYS  
02:47PM 5 APART. MS. GOULD GAVE HER FINGERSTICK SAMPLE ON OCTOBER 2ND  
02:47PM 6 AND THEN ON THE 4TH.

02:47PM 7 SO ON THOSE TWO DAYS, IF SHE WAS PREGNANT, WHICH SHE WAS,  
02:47PM 8 THE VALUE SHOULD HAVE DOUBLED. AND DR. ZACHMAN IS SAYING,  
02:48PM 9 YEAH, BUT IT'S 12,558 AND IT'S 12,558, SO THAT'S NOT DOUBLING.  
02:48PM 10 THAT DOESN'T MAKE ANY SENSE.

02:48PM 11 SO WE HEARD DURING THE COURSE OF THIS TRIAL REPEATEDLY  
02:48PM 12 THAT IN BLOOD TESTING IT'S NOT WHAT YOU CALL AN EXACT SCIENCE.  
02:48PM 13 THESE ARE NOT LIKE DIGITAL RESULTS WHERE YOU GET A 1 OR A 0.  
02:48PM 14 THESE ARE BLOOD TESTING RESULTS THAT COME WITHIN RANGES OF  
02:48PM 15 5 PERCENT, 10 PERCENT, 20 PERCENT, SOMETIMES 30 PERCENT.

02:48PM 16 SO THE CHANCES OF GETTING THE SAME EXACT VALUE FOR TWO  
02:48PM 17 DIFFERENT TESTS TWO DAYS APART ARE VERY, VERY SLIM. I SUPPOSE  
02:48PM 18 IN THE SCHEME OF THE UNIVERSE IT'S POSSIBLE.

02:48PM 19 SO REALLY WHAT IT LOOKS LIKE PROBABLY HAPPENED HERE --  
02:48PM 20 AGAIN, VERY UNFORTUNATELY -- IS NOT ONE, BUT TWO TRANSCRIPTION  
02:48PM 21 ERRORS WHERE SOMEBODY WROTE DOWN THE SAME VALUE IN THIS REPORT  
02:48PM 22 FOR TEST NUMBER 1.

02:48PM 23 AND THAT'S MORE LIKELY THAN NOT WHAT HAPPENED BECAUSE OF  
02:49PM 24 THAT IDENTICAL VALUE ISSUE.

02:49PM 25 BUT IN ANY EVENT, MOVING ON FROM THAT, THERANOS DID CATCH

02:49PM 1 THE DECIMAL PLACE ERROR, AND THEN IN AN EMAIL TO DR. ZACHMAN IT  
02:49PM 2 SAYS "WE IDENTIFIED ONE STEP IN POST PROCESSING THAT WAS CAUSE  
02:49PM 3 OF THIS ERROR. IN ALL THREE CASES THE VALUES FOR ASSAY IN  
02:49PM 4 QUESTION REPORTED WERE 1/100TH OF THE TRUE CLINICAL VALUES THAT  
02:49PM 5 SHOULD HAVE BEEN REPORTED. WE SINCERELY APOLOGIZE FOR THE  
02:49PM 6 ERROR."

02:49PM 7 SO THEY CAUGHT THE DECIMAL PLACE ERROR.

02:49PM 8 AND ON THE OTHER POINT, DR. ZACHMAN WAS ASKED THE QUESTION  
02:49PM 9 ON CROSS-EXAMINATION, "I UNDERSTAND THE VALUE DOESN'T MAKE  
02:49PM 10 SENSE," THIS IS TALKING ABOUT THE 12,558 BEING REPORTED TWICE.  
02:49PM 11 "I UNDERSTAND THE VALUE DOESN'T MAKE SENSE, BUT IF SOMEONE  
02:49PM 12 ACCIDENTALLY REPORTED THE SAME RESULT TWICE, THIS WOULD BE ONE  
02:49PM 13 EXPLANATION FOR THE IDENTICAL RESULT; CORRECT?"

02:49PM 14 SHE SAYS CORRECT.

02:50PM 15 DR. ZACHMAN DOESN'T KNOW THAT, BUT IT IS A POSSIBILITY  
02:50PM 16 THAT EXISTS.

02:50PM 17 AND IT'S, AGAIN, WITH THE IDENTICAL VALUE, WHAT YOU KNOW,  
02:50PM 18 WHAT YOU HAVE LEARNED AS A JURY ABOUT BLOOD TESTING, YOU KNOW,  
02:50PM 19 IDENTICAL RESULTS WHEN THEY'RE DOING PROFICIENCY TESTING OR  
02:50PM 20 QUALITY CONTROL OR ANY TYPE OF COMPARISON, IDENTICAL RESULTS.  
02:50PM 21 THAT'S WHY EVERYTHING WE HAVE SEEN AT TRIAL, THERE'S ALWAYS A  
02:50PM 22 COEFFICIENT OF VARIATION OR THERE'S A STANDARD DEVIATION RANGE,  
02:50PM 23 AND IT'S, AGAIN, CERTAIN PERCENTAGE POINTS, IT COULD BE 10 OR  
02:50PM 24 20 PERCENT, SOMETHING LIKE THAT.

02:50PM 25 SO THERE'S A PRETTY GOOD CHANCE, CERTAINLY FROM A BEYOND A

02:50PM 1 REASONABLE DOUBT PERSPECTIVE, THAT THIS ERROR, OR SORT OF  
02:50PM 2 CASCADE OF ERRORS IN THE CASE OF MS. GOULD, IS NOT EVEN A  
02:50PM 3 PROBLEM WITH THE DEVICE BUT REALLY A PROBLEM WITH SOME PEOPLE  
02:50PM 4 WHO NEED SOME TRANSCRIPTION LESSONS AT THE THERANOS LAB.

02:50PM 5 LET'S MOVE ON FROM THAT THOUGH. SHE WAS INFORMED ABOUT  
02:50PM 6 THE DECIMAL PLACE ERROR.

02:50PM 7 SO WAS MR. BALWANI. HE'S ON THIS EMAIL FROM TINA LIN ON  
02:51PM 8 OCTOBER 7TH. AND IT SAYS REGARDING BRITTANY GOULD, THIS SAME  
02:51PM 9 PATIENT, "HER VISIT ON OCTOBER 2ND WAS OORH. HER VISIT ON  
02:51PM 10 OCTOBER 4TH WAS ALSO OORH INITIALLY BUT WE DID A DILUTED RERUN.  
02:51PM 11 THE RESULT SHOULD BE MULTIPLIED BY 100."

02:51PM 12 YOU CAN SEE RIGHT THERE FROM THAT EMAIL, IT LOOKS LIKE  
02:51PM 13 THERE WAS NO RESULT, LIKE A NUMBER VALUE FOR THE OCTOBER 2ND  
02:51PM 14 TEST. SO THAT SUPPORTS WHAT I'M SAYING IS THAT IF THERE WASN'T  
02:51PM 15 A VALUE, THE CHANCES ARE SOMEONE JUST WROTE DOWN A VALUE THAT  
02:51PM 16 WASN'T REALLY RIGHT, AND THAT'S NOT SOMETHING THAT MR. BALWANI  
02:51PM 17 KNOWS ABOUT, BUT THERE'S TRANSCRIPTION ERRORS GOING ON HERE  
02:51PM 18 THAT ARE UNFORTUNATELY GIVING THIS INFORMATION TO DR. ZACHMAN.

02:51PM 19 FORTUNATELY, IT DIDN'T AFFECT MS. GOULD ULTIMATELY, BUT  
02:51PM 20 OBVIOUSLY THIS IS OF CONCERN IF THERE ARE TRANSCRIPTION ERRORS  
02:51PM 21 GOING ON IN THE LAB.

02:52PM 22 BUT THEN THAT SECOND TEST ON OCTOBER 4TH, THAT'S THE  
02:52PM 23 DECIMAL PLACE ERROR.

02:52PM 24 SO WHAT MR. BALWANI UNDERSTANDS, BECAUSE HE'S BEING  
02:52PM 25 INFORMED OF THIS IN THIS EMAIL, WE MADE A DECIMAL PLACE ERROR.



02:52PM 1 AND HE WOULDN'T CONCLUDE AND SHOULDN'T CONCLUDE FROM THAT THAT  
02:52PM 2 WE'VE GOT A FUNDAMENTAL PROBLEM WITH THE EDISON TESTING. YOU  
02:52PM 3 KNOW, WE'RE GIVING INACCURATE RESULTS OUT TO PATIENTS.

02:52PM 4 THIS IS THIS ONE TEST AND IT'S A DECIMAL PLACE ERROR. SO  
02:52PM 5 THAT'S WHAT MR. BALWANI WOULD HAVE, SHOULD HAVE REASONABLY  
02:52PM 6 TAKEN AWAY FROM THIS EMAIL AND THIS EXPERIENCE WITH MS. GOULD.

02:52PM 7 NOW, AGAIN, ALL HUMAN ENDEAVORS, INCLUDING ESPECIALLY  
02:52PM 8 BLOOD TESTING LABS, STRIVE FOR PERFECTION. BUT DR. ZACHMAN  
02:52PM 9 KNOWS FROM HER EXPERIENCE THAT LABORATORIES MAKE ERRORS, AND  
02:52PM 10 SOMETIMES THERE'S A NEED TO REPEAT A TEST, AND IT'S NOT UNIQUE  
02:52PM 11 TO THERANOS.

02:52PM 12 NOW, THE GOVERNMENT SHOWED YOU A SPREADSHEET. THIS WAS IN  
02:53PM 13 SEPTEMBER OF 2015. MR. BALWANI AND A PROJECT MANAGER NAMED  
02:53PM 14 MAX FOSQUE WERE WORKING ON UNDERSTANDING SOME OF THE CUSTOMER  
02:53PM 15 SERVICE INQUIRIES AND COMPLAINTS THAT COME IN OVER TIME, AND  
02:53PM 16 THEY COMPILE IT IN THIS SPREADSHEET.

02:53PM 17 AND THERE'S AN ENTRY FOR THIS DR. ZACHMAN. AND YOU SEE  
02:53PM 18 IT'S TALKING ABOUT THE HCG TEST.

02:53PM 19 AND ON THE RIGHT SIDE WHERE THERE'S HIGHLIGHTING, THE  
02:53PM 20 NOTE, IN TERMS OF THE REMEDY NOTED IN THE CUSTOMER SERVICE LOG  
02:53PM 21 IS, HUMAN ERROR IDENTIFIED, SOFTWARE UPDATED AND DOC WAS  
02:53PM 22 CONTACTED FOR DISCUSSION.

02:53PM 23 SO THAT'S WHAT HAPPENED WITH DR. ZACHMAN.

02:53PM 24 SO ACCORDING TO THAT THERE'S SOME UPDATE IN THE SOFTWARE  
02:53PM 25 TO TRY TO FIX, YOU KNOW, THIS HUMAN ERROR OF THE DECIMAL PLACE.

02:53PM 1 AND THEN IT SAYS ON THE ENTRY FROM JANUARY 28TH, 2015,  
02:53PM 2 OFFICE, REFERRING IT LOOKS LIKE TO THE SOUTHWEST CONTEMPORARY  
02:54PM 3 WOMEN'S CLINIC, WILL NOT SEND UNTIL WE DO CLINICAL TRIAL.  
02:54PM 4 CHRISTIAN TO FOLLOW UP.

02:54PM 5 SO IT LOOKS LIKE BASED ON THAT NOTE THE SOUTHWEST CLINIC  
02:54PM 6 WANTS, YOU KNOW, SOME MORE TESTING IN THIS, YOU KNOW, IT'S A  
02:54PM 7 CLINICAL TRIAL, BEFORE THEY CAN RESUME TESTING.

02:54PM 8 AND JUST TO GO BACK FOR A MINUTE TO DR. ROSENDORFF, IN  
02:54PM 9 JUNE OF 2014 HE HAD APPROVED RELEASING FINGERSTICK RESULT ON  
02:54PM 10 EDISON. SO ANY CLAIM THE GOVERNMENT MIGHT TRY TO MAKE THAT  
02:54PM 11 DR. ROSENDORFF STOPPED HCG TESTING AND HE NEVER AUTHORIZED IT  
02:54PM 12 AND THIS WAS SOME BRAINCHILD OF MR. BALWANI TO FORCE HCG  
02:54PM 13 TESTING ON EDISON, THAT'S JUST NOT RIGHT.

02:54PM 14 BECAUSE DR. ROSENDORFF, DESPITE HIS TESTIMONY ON THE  
02:54PM 15 STAND, AGAIN, GOING BACK TO THE CONTEMPORANEOUS DOCUMENTS, HE  
02:54PM 16 WAS FORCED TO ADMIT THIS BECAUSE THERE WAS A DOCUMENT WHERE HE  
02:54PM 17 APPROVED THIS, AND HE KNOWS FULL WELL THAT HE ALLOWED HCG  
02:55PM 18 TESTING. HE THOUGHT IT WAS SATISFACTORY IN JUNE -- EARLY JUNE  
02:55PM 19 OF 2014. THAT WAS BEFORE BRITTANY GOULD.

02:55PM 20 SO SOUTHWEST CLINIC, I MENTIONED A MINUTE AGO THIS NOTE  
02:55PM 21 ABOUT THE CLINICAL TRIAL.

02:55PM 22 IF YOU GO TO THE NEXT SLIDE.

02:55PM 23 THEY CONTINUED TO USE THERANOS. SO FIRST OF ALL,  
02:55PM 24 EXHIBIT 20071. IN OCTOBER OF 2015, MOLLY JO RILEY, WHO IS AN  
02:55PM 25 EMPLOYEE OF THE SOUTHWEST CONTEMPORARY WOMEN'S CLINIC, IS

02:55PM 1 TALKING ABOUT THE BIDIRECTIONAL INTERFACE WITH THERANOS HAS  
02:55PM 2 BEEN SET UP. WE ARE NOW ABLE TO SEND LAB ORDERS TO AND RECEIVE  
02:55PM 3 RESULTS FROM THERANOS ELECTRONICALLY.

02:55PM 4 SO OBVIOUSLY YOU DON'T SET UP AN ELECTRONIC INTERFACE WITH  
02:55PM 5 THERANOS TO SEND LAB ORDERS IF YOU'RE NOT GOING TO USE THEIR  
02:55PM 6 SERVICE ANYMORE.

02:55PM 7 AND IT SAYS THE PROCESS IS THE SAME AS FOR SONORAQUEST,  
02:56PM 8 PROPATH, AND LABCORP.

02:56PM 9 20074 IS THE NEXT EXHIBIT.

02:56PM 10 SO IN THIS TRIAL WE KNOW THAT ALL LABS MAKE ERRORS. THEY  
02:56PM 11 CALLED ONE PATIENT WHO HAD AN ISSUE WITH HCG TESTING AT  
02:56PM 12 THERANOS, BUT THAT'S NOT WHAT THIS TRIAL IS ABOUT, BECAUSE IF  
02:56PM 13 THAT WAS WHAT THIS TRIAL WAS ABOUT, THEN ANY LAB COULD BE IN A  
02:56PM 14 FEDERAL CRIMINAL TRIAL ANY DAY BECAUSE WE KNOW ALL LABS MAKE  
02:56PM 15 ERRORS.

02:56PM 16 BUT THE ISSUE IS, IS THERE SOME SYSTEMIC, SOME WIDESPREAD  
02:56PM 17 PROBLEM THAT MR. BALWANI KNOWS ABOUT, OR EVEN AT ALL.

02:56PM 18 AND HERE IT'S DR. ZACHMAN WHO IS HAVING A COMMUNICATION  
02:56PM 19 WITH A FEDERAL AGENT NAMED GEORGE SCAVDIS, AND DR. ZACHMAN SAYS  
02:56PM 20 AT THE BOTTOM THAT SHE HAS REVIEWED ALL OF THE CHARTS AND DID  
02:57PM 21 NOT COME UP WITH MUCH THAT SEEMED OUT OF PLACE. I WILL RUN A  
02:57PM 22 COUPLE BY DR. LINNERSON TOMORROW TO MAKE SURE HE AGREES.

02:57PM 23 SO ANOTHER DOCTOR IN THE CLINIC, SHE WANTS TO RUN -- SHE'S  
02:57PM 24 NOT JUST CHECKING HER OWN PATIENTS. SHE'S ALSO TALKING TO  
02:57PM 25 DR. LINNERSON. AND SHE'S REVIEWING THE CHARTS AT THE REQUEST

02:57PM 1 OF THE GOVERNMENT TO SEE IF SHE CAN FIND MORE PROBLEMS.

02:57PM 2 AND THEN SHE REPORTS ON JANUARY 8TH, 2021. "AFTER A  
02:57PM 3 THOROUGH REVIEW, IT HAS BEEN DETERMINED THAT THERE WERE NOT ANY  
02:57PM 4 QUANT RESULTS THAT, IF IN QUESTION, MADE ANY CLINICAL  
02:57PM 5 DIFFERENCE.

02:57PM 6 "THE CASE WITH B.G. AND HER INTERACTION WITH ME IS THE  
02:57PM 7 ONLY CIRCUMSTANCE THAT HAD QUANT VALUES THAT WERE OVERTLY  
02:57PM 8 ABNORMAL AND MADE A DIFFERENCE TO HER CARE."

02:57PM 9 AND THEN SHE SAYS, "SORRY I DO NOT HAVE MORE TO REPORT."

02:57PM 10 SO APPARENTLY SHE WAS DOING HER BEST TO HELP THE  
02:58PM 11 GOVERNMENT BECAUSE SHE'S SORRY SHE DIDN'T HAVE MORE TO REPORT.  
02:58PM 12 AND THAT'S FINE.

02:58PM 13 BUT THOSE ARE THE FACTS, THAT IF THERE WAS SOME WIDESPREAD  
02:58PM 14 PROBLEM, YOU WOULD EXPECT THAT DR. ZACHMAN WOULD HAVE PLENTY OF  
02:58PM 15 ISSUES SHE COULD FIND. AND SHE DID THE DIGGING AND SHE DIDN'T  
02:58PM 16 FIND ANYTHING EXCEPT BRITTANY GOULD AND THAT'S WHAT SHE TOLD  
02:58PM 17 AGENT SCAVDIS.

02:58PM 18 SO THEN YOU MIGHT REMEMBER THIS PIECE OF EVIDENCE CAME IN  
02:58PM 19 TOWARDS THE END OF THE TRIAL. IT'S EXHIBIT 20073A, AND IT'S A  
02:58PM 20 NATIVE SPREADSHEET. AND JUDGE DAVILA READ YOU A STIPULATION  
02:58PM 21 THAT WE REACHED WITH THE GOVERNMENT ABOUT HOW THAT'S AN  
02:58PM 22 AUTHENTIC SPREADSHEET PRODUCED BY SOUTHWEST CONTEMPORARY  
02:58PM 23 WOMEN'S CLINIC, REFLECTS ALL SWCWC PATIENTS WHO RECEIVED  
02:58PM 24 THERANOS BLOOD TESTING RESULTS AFTER AUGUST 2015.

02:58PM 25 AND THE SPREADSHEET -- THIS IS THE SPREADSHEET, AND IF YOU

02:59PM 1 WANT TO LOOK AT THAT YOU CAN LOOK AT IT DURING DELIBERATIONS,  
02:59PM 2 BUT I WANT TO POINT OUT A FEW THINGS THAT APPEAR FROM THAT  
02:59PM 3 SPREADSHEET, WHICH AGAIN IS EXHIBIT 20073A.

02:59PM 4 IF YOU GO TO THE NEXT SLIDE.

02:59PM 5 RIGHT. SO ON THIS SPREADSHEET THERE'S 1,154 SOUTHWEST  
02:59PM 6 CLINIC PATIENT VISITS TO THERANOS; THERE'S -- OF THOSE  
02:59PM 7 PATIENTS, THERE ARE 277 HCG TESTS FROM THERANOS; AND THEN  
02:59PM 8 DR. ZACHMAN'S OWN PATIENTS, APART FROM OTHER PROVIDERS AT THE  
02:59PM 9 SOUTHWEST CLINIC, SHE HAD 21 PATIENT VISITS AFTER AUGUST OF  
02:59PM 10 2015, AND THEN OF THOSE PATIENTS 12 RECEIVED HCG TESTS.

02:59PM 11 SO THERE WERE ALMOST 300, WE'LL CALL IT OVER 250, TESTS TO  
03:00PM 12 PICK FROM AND COULDN'T FIND ANY PROBLEMS, AT LEAST THE ONES  
03:00PM 13 AFTER AUGUST 15TH. IT DOESN'T COUNT ANY TESTS BEFORE AUGUST OF  
03:00PM 14 2015.

03:00PM 15 IF YOU GO TO THE NEXT SLIDE.

03:00PM 16 THAT'S THE ERROR RATE BASED ON WHAT WE KNOW. WE KNOW  
03:00PM 17 ABOUT MS. GOULD. NOT CLEAR IF IT'S REALLY A PROBLEM WITH THE  
03:00PM 18 THERANOS EDISON DEVICE OR JUST TRANSCRIPTION ERRORS. BUT EVEN  
03:00PM 19 IF WE CALL IT A PROBLEM WITH THE THERANOS EDISON, THAT'S 1 OUT  
03:00PM 20 OF 277.

03:00PM 21 I SHOULD SAY THAT THERE'S TESTING THAT GOES ON AFTER  
03:00PM 22 OCTOBER THAT ARE NOT EDISON TESTS. SO THERE'S COMMERCIAL  
03:00PM 23 TESTING THAT IS GOING ON AS WELL THAT THERANOS IS CONDUCTING  
03:00PM 24 FOR HCG.

03:00PM 25 BUT THE GOVERNMENT'S CLAIM IN THIS CASE IS THAT ALL OF THE

03:00PM 1 THERANOS TESTING IS BAD, NOT JUST ON THE EDISON.

03:00PM 2 SO THAT'S THE ERROR RATE THAT WE KNOW FROM THE FACTS THAT  
03:00PM 3 WERE INTRODUCED AT TRIAL.

03:00PM 4 LET'S GO TO BRENT BINGHAM, WHO WAS ANOTHER PATIENT.

03:01PM 5 MR. BINGHAM WAS THE GENTLEMAN WHO HAD A CONDITION  
03:01PM 6 INVOLVING A NEED TO MONITOR HIS PLATELET COUNT. AND HE TALKED  
03:01PM 7 ABOUT HOW UNFORTUNATELY HE HAS THIS MEDICAL CONDITION AND THAT  
03:01PM 8 HE HAS A SENSE OF THE PLATELET COUNT NUMBER AND HOW HE FEELS  
03:01PM 9 AND WHEN THE PLATELET COUNT GETS TOO HIGH HE STARTS FEELING  
03:01PM 10 BAD, SO THERE'S A NEED FOR HIM, FOR HIS PERSONAL ISSUE, TO LOOK  
03:01PM 11 AT THOSE PLATELET COUNT NUMBERS.

03:01PM 12 BUT WHAT WE HAVE TO TALK ABOUT HERE IS THE LEVEL OF PROOF  
03:01PM 13 THAT EXISTS HERE. OBVIOUSLY WE CAN FEEL BAD FOR MR. BINGHAM  
03:01PM 14 WHO UNFORTUNATELY HAS THIS CONDITION.

03:01PM 15 BUT LET'S GO TO THE NEXT SLIDE.

03:01PM 16 SO HE HAD FOUR TESTS AT THERANOS AND THE ONES THAT ARE  
03:01PM 17 BLANK THERE ARE COMPLETELY UNKNOWN. WE HAVE NO IDEA WHAT THOSE  
03:01PM 18 REPORTS SAY BECAUSE WE DON'T HAVE THEM. IF WE HAD THE  
03:02PM 19 LABORATORY INFORMATION SYSTEM, WHICH WE CAN TALK ABOUT IN JUST  
03:02PM 20 A BIT, WE WOULD HAVE THOSE, BUT WE DON'T. SO WE DON'T.

03:02PM 21 SO WE DO HAVE ONE REPORT FROM AUGUST 27TH OF 2015, AND  
03:02PM 22 I'LL TALK ABOUT THAT REPORT.

03:02PM 23 BUT BECAUSE WE DON'T HAVE THE OTHER REPORTS, BECAUSE WE  
03:02PM 24 DON'T HAVE THE LIS, WE'RE LEFT, IN A FEDERAL CRIMINAL TRIAL  
03:02PM 25 WHERE THE STANDARD OF PROOF IS BEYOND A REASONABLE DOUBT, TO

03:02PM 1 JUST GO BY MR. BINGHAM'S FEEL, LIKE HE HAS A SENSE THAT, YEAH,  
03:02PM 2 HE REMEMBERS -- THIS IS SEVEN YEARS AGO, ALMOST SEVEN YEARS  
03:02PM 3 AGO -- THAT I GOT A THERANOS TEST AND THE NUMBER I GOT,  
03:02PM 4 WHATEVER IT WAS, BECAUSE WE DON'T KNOW WHAT IT WAS, IT DIDN'T  
03:02PM 5 CORRELATE WITH THE WAY I WAS FEELING THAT DAY.

03:02PM 6 AND SO WE'VE GOT TO GO BY, BECAUSE OF THE GOVERNMENT'S  
03:02PM 7 FAILURE TO GET THE LIS, AND I'LL TALK ABOUT THAT, WE'RE LEFT  
03:02PM 8 WITH, IN A FEDERAL CRIMINAL TRIAL, LET'S THINK ABOUT HOW  
03:02PM 9 MR. BINGHAM WAS FEELING THAT DAY OR IN THREE DAYS SEVEN YEARS  
03:03PM 10 AGO AND LET'S BASE THE ISSUE OF MR. BALWANI'S GUILT OR NOT  
03:03PM 11 GUILT ON THAT. AND THAT DOESN'T MAKE ANY SENSE, BUT THAT'S  
03:03PM 12 WHERE WE ARE.

03:03PM 13 AND I WANT TO TALK ABOUT THE 8/27/2015 RESULT.

03:03PM 14 LET'S GO TO THE NEXT SLIDE.

03:03PM 15 ONE MORE THING I GUESS BEFORE I DO. HE ACTUALLY TRIED TO  
03:03PM 16 RECOVER REPORTS FROM THE THERANOS SYSTEM AND HE COULDN'T DO  
03:03PM 17 THAT BECAUSE OBVIOUSLY THAT DOESN'T EXIST.

03:03PM 18 SO THE FIRST TEST THAT MR. BINGHAM GOT AT THERANOS WAS  
03:03PM 19 FINGERSTICK. THAT'S THE FIRST ONE. AND THE REMAINING VISITS  
03:03PM 20 WERE USED USING THE VEIN DRAW.

03:03PM 21 SO WHAT THAT TELLS YOU RIGHT AWAY -- I'M GOING TO TALK  
03:03PM 22 MORE ABOUT THAT FINGERSTICK TEST. BUT HIS MEMORY IS THAT THE  
03:03PM 23 FIRST TEST WAS FINGERSTICK, PINPRICK OF THE FINGER, AND THEN  
03:03PM 24 THE REST WERE FROM THE VEIN. THAT WAS HIS ANSWER.

03:03PM 25 SO WE KNOW THAT THE OTHER ONES FOR SURE, THE VEIN DRAWS,

03:03PM 1 WERE COMMERCIAL TRADITIONAL METHODS, RIGHT? SO IT'S NOT REALLY  
03:04PM 2 A PROBLEM WITH THERANOS'S TECHNOLOGY, WHATEVER THE PROBLEM  
03:04PM 3 MIGHT HAVE BEEN.

03:04PM 4 THE FIRST ONE WE DON'T HAVE THE ACTUAL LAB REPORT FOR, SO  
03:04PM 5 THE GOVERNMENT IS TRYING TO SECURE A CONVICTION OF MR. BALWANI  
03:04PM 6 ON THAT, BUT THEY DON'T EVEN HAVE A LAB REPORT FROM  
03:04PM 7 MR. BINGHAM.

03:04PM 8 LET'S GO TO THE NEXT SLIDE.

03:04PM 9 NOW, I WANT TO TALK ABOUT THAT FINGERSTICK TEST. SO WE  
03:04PM 10 KNOW WHAT HAPPENED WITH THE VEIN DRAWS. VEIN DRAWS MEAN  
03:04PM 11 TRADITIONAL METHODS, COMMERCIAL TESTING, FDA APPROVED.

03:04PM 12 BUT THERE'S AN INTERESTING THING ABOUT THIS PLATELET COUNT  
03:04PM 13 TEST, AND THIS IS ONE OF THOSE TESTS WHERE A COMMERCIAL DEVICE  
03:04PM 14 CAN BE USED TO TEST FINGERSTICK. SO THIS IS FROM THE CMS  
03:04PM 15 REPORT, THIS CALL OUT HERE, EXHIBIT 4621, AND THE PAGES I'M  
03:04PM 16 GOING TO SHOW YOU ARE PAGES 32, 33, AND 38 OF THAT REPORT.

03:04PM 17 SO IT SAYS RIGHT HERE, "IT WAS THE PRACTICE OF THE  
03:04PM 18 LABORATORY TO TEST PATIENT CAPILLARY CBC SPECIMENS USING TWO  
03:05PM 19 DREW3 INSTRUMENTS THE LABORATORY DESIGNATED AS DREW2 AND  
03:05PM 20 DREW3."

03:05PM 21 SO CAPILLARY SPECIMENS, THAT'S THE FINGERSTICK SAMPLE,  
03:05PM 22 THAT'S WHAT THE EVIDENCE IS IN THIS TRIAL, AND THAT IS THE  
03:05PM 23 CASE, AND THAT'S THE PRACTICE OF THE LABORATORY.

03:05PM 24 AND THE DREW3 IS NOT A THERANOS INSTRUMENT.

03:05PM 25 SO LET'S GO TO THE NEXT SLIDE. THIS IS ALSO FROM THE CMS



03:05PM 1 REPORT.

03:05PM 2 "ACCORDING TO LABORATORY PERSONNEL, BETWEEN JUNE 27TH,  
03:05PM 3 2015, AND SEPTEMBER 24TH, 2015, THE LABORATORY USED ONE OF THE  
03:05PM 4 DREW3 INSTRUMENTS ON 30 DIFFERENT DAYS TO PERFORM AND REPORT  
03:05PM 5 PATIENT CBC SPECIMENS AND USED THE OTHER DREW3 INSTRUMENT ON 87  
03:05PM 6 DIFFERENT DAYS TO PERFORM AND REPORT PATIENT CBC SPECIMENS."

03:05PM 7 SO WE KNOW THAT MR. BINGHAM'S FIRST TEST, WHICH WAS THE  
03:05PM 8 FINGERSTICK TEST, WAS AUGUST 11TH, 2015, SO IT'S IN THAT DATE  
03:06PM 9 RANGE OF JUNE 27TH TO SEPTEMBER 24TH, 2015.

03:06PM 10 SO IT LOOKS LIKE THE FINGERSTICK RESULT THAT MR. BINGHAM  
03:06PM 11 HAD, AND WE DON'T HAVE THE LAB REPORT, BUT IT LOOKS LIKE FROM  
03:06PM 12 THE EVIDENCE THAT WE DO HAVE, THIS WAS RUN ON A DREW3.

03:06PM 13 SO THERE'S NO EVIDENCE IN THIS CASE THAT THERE WAS  
03:06PM 14 ANYTHING WRONG WITH THE DREW3 OR THAT THESE COMMERCIAL TESTS  
03:06PM 15 ARE A PROBLEM.

03:06PM 16 SO WHATEVER HAPPENED TO MR. BINGHAM IN THAT FIRST TEST,  
03:06PM 17 THAT FINGERSTICK TEST, IT'S NOT A PROBLEM WITH THE THERANOS  
03:06PM 18 TECHNOLOGY.

03:06PM 19 YOU KNOW, THE GOVERNMENT HAS THIS DOCUMENT, JUST LIKE WE  
03:06PM 20 HAVE IT, BUT THEY HAVE NOT BROUGHT THIS OUT. WE HAD TO GO DIG  
03:06PM 21 THIS OUT AND EXPLAIN WHAT REALLY HAPPENED, AND THAT'S ONE OF  
03:06PM 22 THE REASONS WHY I'M TALKING TO YOU FOR THREE DAYS, BECAUSE WE  
03:06PM 23 HAVE TO SHOW YOU ALL OF THESE DOCUMENTS TO SHOW YOU THE REAL  
03:06PM 24 FACTS. THIS IS VERY DETAILED OBVIOUSLY.

03:06PM 25 BUT THAT'S WHAT HAPPENED ON HIS FIRST TEST.

03:06PM 1 SECOND, THIRD, FOURTH TEST FOR MR. BINGHAM WERE ALL ON  
03:07PM 2 VENOUS DRAW, TRADITIONAL METHODS, AND THERE'S NO EVIDENCE THAT  
03:07PM 3 THEY WERE RUN ON THERANOS TECHNOLOGY.

03:07PM 4 OKAY. I WANT TO TALK ABOUT ONE OTHER ISSUE WITH REGARD TO  
03:07PM 5 MR. BINGHAM. SO ONE OF THE ELEMENTS -- I DON'T WANT TO DWELL  
03:07PM 6 ON THIS, BUT THERE'S ACTUALLY AN ELEMENT OF THE FEDERAL CRIMES,  
03:07PM 7 WIRE FRAUD CRIMES THAT MR. BALWANI IS CHARGED WITH AS YOU HEARD  
03:07PM 8 THAT REQUIRES AN INTERSTATE WIRE COMMUNICATION.

03:07PM 9 I WOULD BE REMISS IN MY DUTIES IF I DIDN'T POINT THAT OUT  
03:07PM 10 TO YOU THAT THE GOVERNMENT HASN'T MEANT THAT ELEMENT IN THE  
03:07PM 11 CASE OF MR. BINGHAM.

03:07PM 12 AND THE COUNT OF THE INDICTMENT THAT RELATES TO  
03:07PM 13 MR. BINGHAM RELATES TO A PHONE CALL. IT'S NOT A TRANSMISSION  
03:07PM 14 OF A REPORT OR SOMETHING LIKE THAT. IT'S A PHONE CALL THAT HE  
03:07PM 15 MADE TO THERANOS.

03:07PM 16 AND THE ONLY EVIDENCE THAT YOU'VE HEARD FROM THE  
03:07PM 17 GOVERNMENT IS THAT, WELL, THE CUSTOMER SERVICE DEPARTMENT,  
03:07PM 18 ACCORDING TO MR. EDLIN, WAS IN PALO ALTO.

03:08PM 19 BUT THE QUESTION WAS PUT TO MR. BINGHAM, "WHEN YOU CALLED,  
03:08PM 20 YOU DON'T REMEMBER WHO THE OTHER SIDE OF THE LINE, WHETHER IT  
03:08PM 21 WAS A RECORDING OR A REAL PERSON, YOU DON'T KNOW WHERE THEY  
03:08PM 22 ACTUALLY WERE, DO YOU?"

03:08PM 23 HE SAYS, "NO, I DO NOT.

03:08PM 24 "AND SO THEY COULD HAVE BEEN IN ARIZONA FOR ALL YOU KNOW?"

03:08PM 25 HE SAYS YEAH.

03:08PM 1 SO WE DON'T HAVE IN THIS CASE A BEYOND A REASONABLE DOUBT  
03:08PM 2 PROOF EVEN ON THAT ONE ELEMENT OF WHETHER THERE WAS INTERSTATE  
03:08PM 3 COMMUNICATION. MAYBE HE CALLED THERANOS CUSTOMER SERVICE.

03:08PM 4 WE KNOW OTHER PEOPLE CALLED AND GOT THROUGH TO ARIZONA.  
03:08PM 5 WE KNOW THERE WAS AN ARIZONA LAB. WE KNOW MR. BINGHAM WAS IN  
03:08PM 6 ARIZONA.

03:08PM 7 SO THERE'S JUST NOT ENOUGH EVIDENCE HERE TO CONCLUDE THAT  
03:08PM 8 THAT ELEMENT IS MET. AND AGAIN, I THINK IT'S IMPORTANT TO  
03:08PM 9 POINT THAT OUT BECAUSE THAT'S OBVIOUSLY MY JOB AS DEFENSE  
03:08PM 10 COUNSEL. EVEN IF IT SEEMS LIKE A SMALL ISSUE, IT IS ONE OF THE  
03:08PM 11 ELEMENTS OF THE OFFENSE. THAT'S WHY WE'RE IN FEDERAL COURT.  
03:08PM 12 AS MR. SCHENK TOLD YOU, YOU NEED THAT INTERSTATE COMMUNICATION  
03:08PM 13 ELEMENT TO BE MET.

03:09PM 14 LET'S TALK ABOUT ERIN TOMPKINS. ERIN TOMPKINS IS A COUNT  
03:09PM 15 OF THE INDICTMENT AS WELL, AND SHE TESTIFIED ABOUT AN HIV TEST  
03:09PM 16 SHE GOT AT THERANOS.

03:09PM 17 SO LET'S JUST GO THROUGH THAT.

03:09PM 18 SO, FIRST OF ALL, THIS WAS A VEIN DRAW. AND AS YOU'LL SEE  
03:09PM 19 IN A SECOND WITH THE TESTIMONY OF DR. ROSENDORFF, THERANOS RAN  
03:09PM 20 HIV TESTING ON COMMERCIAL EQUIPMENT, FDA APPROVED. IT WASN'T  
03:09PM 21 THEIR OWN TECHNOLOGY. THAT'S DR. ROSENDORFF.

03:09PM 22 HE SAID THERANOS OFFERED THAT ON FDA PREDICATE MACHINES?

03:09PM 23 HE SAID CORRECT.

03:09PM 24 SO THIS WAS ANOTHER COMMERCIAL TEST.

03:09PM 25 AND THE GOVERNMENT REALLY DIDN'T GO INTO THAT IN THEIR

03:09PM 1 PRESENTATION, BECAUSE EVEN THOUGH THERE'S NO EVIDENCE THAT  
03:09PM 2 THERE'S ANYTHING WRONG WITH THE COMMERCIAL HIV TESTING THAT  
03:10PM 3 THERANOS WAS DOING, THEY'VE GOT THIS ONE PATIENT WHO HAD AN HIV  
03:10PM 4 TEST THAT SHE THINKS WAS INACCURATE.

03:10PM 5 SO THAT SOUNDS BAD, RIGHT? WE WOULD ALL WANT TO GET AN  
03:10PM 6 ACCURATE HIV TEST. NO ONE WANTS TO BE TOLD THEY HAVE HIV IF  
03:10PM 7 THEY DON'T HAVE IT, OR EVEN IF THEY DO HAVE IT.

03:10PM 8 BUT I THINK THAT HERE, THIS WAS A SHINY OBJECT TO PUT IN  
03:10PM 9 FRONT OF YOU. LOOK AT THE PATIENT WHO GOT AN INACCURATE HIV  
03:10PM 10 TEST.

03:10PM 11 THERE ARE MANY PROBLEMS WITH THAT, THE FIRST OF WHICH IS  
03:10PM 12 THAT IT WAS NOT EVEN ON A THERANOS DEVICE. NO EVIDENCE THAT  
03:10PM 13 THERE'S ANYTHING WRONG WITH THE COMMERCIAL TEST.

03:10PM 14 SO LET'S MOVE ON TO MS. TOMPKINS'S REPORT. SO THIS IS THE  
03:10PM 15 REPORT THAT SHE GOT FROM THERANOS. ACTUALLY, TO BE ACCURATE,  
03:10PM 16 HER DOCTOR, DR. ASIN, GOT THIS REPORT.

03:10PM 17 SO YOU HAVE THIS PHYSICIAN. THE GOVERNMENT DECIDED NOT TO  
03:10PM 18 CALLED DR. ASIN, SO WE DIDN'T HEAR FROM THE DOCTOR AND WHAT HIS  
03:10PM 19 INTERACTIONS WITH MS. TOMPKINS MIGHT HAVE BEEN. YOU WOULD  
03:11PM 20 THINK AS A MATTER OF COMMON SENSE THAT A MEDICAL DOCTOR WOULD  
03:11PM 21 UNDERSTAND HOW THESE TESTS WORK AND HOW THE FOLLOW-UP TESTING  
03:11PM 22 IS DONE AND WHAT THE CENTERS FOR DISEASE CONTROL RECOMMEND.

03:11PM 23 BUT WE DIDN'T HEAR FROM DR. ASIN. WE HEARD FROM  
03:11PM 24 MS. TOMPKINS.

03:11PM 25 SO THE FIRST TEST IS THIS HIV-1 PLUS 2 ANTIBODY TEST, AND

03:11PM 1 THAT WAS THE ONE THAT WAS REACTIVE. SO THAT'S THE TEST, IT'S  
03:11PM 2 THE ONE THAT'S NOT HIGHLIGHTED AT THE TOP. THAT'S THE ONE THAT  
03:11PM 3 MS. TOMPKINS IS COMPLAINING ABOUT REALLY.

03:11PM 4 BUT THESE OTHER TESTS, HIV-1 ANTIBODY AND THEN HIV-2  
03:11PM 5 ANTIBODY SEPARATELY, THOSE ARE BOTH NONREACTIVE. AND THEN THE  
03:11PM 6 HIV-1 RNA, THAT'S THE NUCLEIC ACID TEST, NOT DETECTED.

03:11PM 7 AND THERE'S A NOTE RIGHT IN THE LAB REPORT THAT  
03:11PM 8 MS. TOMPKINS GOT, "HIV ANTIBODIES WERE NOT CONFIRMED AND HIV-1  
03:11PM 9 RNA WAS NOT DETECTED. NO LABORATORY EVIDENCE OF HIV-1  
03:12PM 10 INFECTION. FOLLOW-UP TESTING FOR HIV-2 SHOULD BE PERFORMED IF  
03:12PM 11 CLINICALLY INDICATED."

03:12PM 12 SO SHE'S BEING TOLD THAT SHE DOESN'T HAVE HIV. THAT'S THE  
03:12PM 13 BOTTOM LINE HERE.

03:12PM 14 BUT SHE'S UPSET, AND THAT'S HER RIGHT TO BE, ABOUT THE  
03:12PM 15 REACTIVE. I'M NOT SURE WHY SHE CAN'T JUST GET THAT EXPLANATION  
03:12PM 16 FROM HER DOCTOR, BUT THAT WAS HER ISSUE.

03:12PM 17 IF YOU GO TO THE NEXT SLIDE.

03:12PM 18 THIS IS AN EXHIBIT THAT WE WENT OVER WITH MS. TOMPKINS ON  
03:12PM 19 CROSS, NOT BECAUSE SHE KNOWS ANYTHING ABOUT THIS, MAYBE HER  
03:12PM 20 DOCTOR WOULD, BUT IT WAS IMPORTANT TO SHOW YOU THAT THERANOS  
03:12PM 21 FOLLOWED THE CDC GUIDANCE EXACTLY IN THE CASE OF MS. TOMPKINS.

03:12PM 22 AND THE CDC GUIDANCE CONTEMPLATES THAT THERE'S GOING TO BE  
03:12PM 23 TIMES WHEN THERE'S A POSITIVE FOR HIV-1 AND 2 ANTIGEN TESTING.  
03:12PM 24 THAT'S GOING TO HAPPEN. AND THE CDC HAS THAT TAKEN INTO  
03:12PM 25 ACCOUNT IN THE FLOW CHART. AND IF YOU WANT TO LOOK AT THAT,

03:12PM 1 THAT'S EXHIBIT 20683, THE CDC RECOMMENDATION FOR HIV TESTING.

03:13PM 2 SO IF IT'S POSITIVE, THEN THE CDC DOESN'T SAY, STOP THERE  
03:13PM 3 AND TELL THE PATIENT THEY HAVE HIV. NO. IT SAYS GO THROUGH  
03:13PM 4 THE OTHER STEPS.

03:13PM 5 AND THE OTHER STEPS ARE TO DO THE HIV-1 AND THE HIV-2  
03:13PM 6 SEPARATELY AS ANTIBODY TESTS, AND THAT'S WHAT THERANOS DID,  
03:13PM 7 THOSE WERE NONREACTIVE, AND SO THAT'S GOOD NEWS FOR  
03:13PM 8 MS. TOMPKINS.

03:13PM 9 AND THEN FINALLY, THEY'RE SUPPOSED TO CONFIRM WITH THE  
03:13PM 10 HIV-1 NUCLEIC ACID TEST, THAT'S THE NAT, SO AT THE VERY BOTTOM  
03:13PM 11 IT'S HIGHLIGHTED HIV-1 NAT, WHICH YOU CAN SEE IS DEFINED AS  
03:13PM 12 NUCLEIC ACID TEST, THAT WAS DONE, AND IF THAT'S WHAT THE LAB  
03:13PM 13 DOES AND IF IT'S NEGATIVE, THEN THE PERSON IS NEGATIVE FOR  
03:13PM 14 HIV-1.

03:13PM 15 THAT'S EXACTLY WHAT THERANOS DID AND THAT'S EXACTLY WHAT  
03:13PM 16 MS. TOMPKINS WAS TOLD.

03:13PM 17 SO THIS IS JUST, YOU KNOW, ONE OF THOSE TIMES THAT, FOR  
03:14PM 18 WHATEVER REASON, SHE WAS POSITIVE, AS THE CDC CONTEMPLATES, FOR  
03:14PM 19 THE ANTIGEN TEST, AND THEN THERANOS DID EXACTLY THE PROTOCOL,  
03:14PM 20 FOLLOWED THROUGH, AND SHE WAS TOLD IN THE LAB NOTE, YOU DON'T  
03:14PM 21 HAVE HIV.

03:14PM 22 AND THEN AS I SAID, IN ANY EVENT, SHE GOT A VENOUS DRAW  
03:14PM 23 AND HER TEST WAS ON A COMMERCIAL DEVICE, SO I'M NOT SURE WHAT  
03:14PM 24 THAT HAS TO DO WITH THIS TRIAL.

03:14PM 25 LET'S GO TO MEHRL ELLSWORTH, DR. ELLSWORTH. HE'S A

03:14PM 1 DENTIST IN ARIZONA, AND HIS DOCTOR WAS DR. MARK BURNES. THIS  
03:14PM 2 IS A DIFFERENT ASSAY CALLED PSA, PROSTATE SPECIFIC ANTIGEN.  
03:14PM 3 AND IT LOOK LIKE THERE WAS AN ERROR IN THE CASE OF  
03:14PM 4 DR. ELLSWORTH.

03:14PM 5 SO LET'S LOOK AT THE LAB REPORTS. HE HAS THESE FOUR  
03:14PM 6 TESTS, MAY 14TH, MAY 18TH, JUNE 11TH, AND JUNE 30TH, ALL IN  
03:14PM 7 2015.

03:14PM 8 SO LET'S LOOK FIRST AT WHAT WAS HAPPENING INTERNALLY AT  
03:15PM 9 THERANOS. SO THIS IS AN EMAIL FROM DAN FLOREY TO MR. BALWANI  
03:15PM 10 AND A COPY TO DR. YOUNG AND OTHERS.

03:15PM 11 AND WHAT IT SAYS -- THIS IS SUNNY BALWANI TALKING. "I DO  
03:15PM 12 NOT BELIEVE SAMPLE MIX UP IS POSSIBLE BY A REMOTE SHOT IN OUR  
03:15PM 13 SYSTEM."

03:15PM 14 SO MR. BALWANI IS NOT LATCHING ON TO THAT AS AN  
03:15PM 15 EXPLANATION. THAT WOULD BE A CONVENIENT EXPLANATION, BY THE  
03:15PM 16 WAY. IF THERE'S A SAMPLE MIXUP, THEN THAT'S BAD. BUT THEN YOU  
03:15PM 17 WOULDN'T HAVE TO WORRY ABOUT GETTING TO THE ROOT CAUSE OF  
03:15PM 18 ANYTHING BECAUSE YOU WOULD UNDERSTAND WHAT HAPPENED.

03:15PM 19 BUT MR. BALWANI IS NOT SEARCHING FOR THAT. HE WANTS TO  
03:15PM 20 KNOW WHAT REALLY HAPPENED.

03:15PM 21 SO HE SAID, "WE SHOULD START BY RERUNNING THE SAMPLE TO  
03:15PM 22 START AND THEN WORK BACKWARDS FROM THERE."

03:15PM 23 AND THEN HE SAYS, TINA CAN YOU PLEASE OWN THIS AND UPDATE  
03:16PM 24 ME IN REAL TIME. AND HE SAYS AGAIN PLEASE UPDATE ME IN REAL  
03:16PM 25 TIME.

03:16PM 1 THIS IS THE OPPOSITE OF MR. BALWANI SAYING I DON'T CARE,  
03:16PM 2 WE'RE MAKING MONEY FROM PATIENTS. THEY'RE PAYING THEIR 35  
03:16PM 3 BUCKS. SO KEEP THE TESTING ROLLING. HE DOESN'T SAY THAT.

03:16PM 4 HE SAYS PLEASE UPDATE ME IN REAL TIME, I REALLY WANT TO  
03:16PM 5 KNOW WHAT IS GOING ON HERE.

03:16PM 6 CAN YOU GO BACK TO PAGE, MR. ALLEN, 4415.2.3.

03:16PM 7 SO INTERNALLY WITHIN THERANOS DR. YOUNG SAYS TO  
03:16PM 8 MR. BALWANI AND OTHERS, "THE MOST RECENT SAMPLE (EDTA, P CTN)  
03:16PM 9 WAS FLAGGED FOR HEMOLYSIS AND CLOTTING."

03:16PM 10 WE HEARD ABOUT THAT YESTERDAY WITH REGARD TO POTASSIUM AND  
03:16PM 11 DURING TRIAL WITH DR. ROSENDORFF AND OTHERS, THAT THIS WAS A  
03:16PM 12 SAMPLE COLLECTION PROBLEM, HEMOLYSIS AND CLOTTING.

03:16PM 13 IF THE LAB HAD THAT ISSUE AND RAN A SAMPLE ANYWAY, THEY  
03:17PM 14 SHOULDN'T HAVE DONE THAT.

03:17PM 15 BUT, AGAIN, NOT NECESSARILY A PROBLEM WITH THE UNDERLYING  
03:17PM 16 EDISON TESTS, WHICH AS WE KNOW MR. -- DR. ROSENDORFF VALIDATED  
03:17PM 17 AND WAS THE SUBJECT, AGAIN, OF ONE OF THOSE ALTERNATIVE  
03:17PM 18 ASSESSMENT PROCEDURE HEAD-TO-HEAD COMPARISONS WITH FDA APPROVED  
03:17PM 19 TECHNOLOGY AND CAME UP 100 PERCENT PERFECT.

03:17PM 20 AND THAT WAS JUST A COUPLE OF MONTHS, I THINK IT WAS IN  
03:17PM 21 MARCH, BEFORE THIS TEST.

03:17PM 22 SO LABS SHOULDN'T BE RUNNING SAMPLES UNDER HEMOLYSED AND  
03:17PM 23 CLOTTING, BUT THAT WOULD EXPLAIN THE RESULT, AND THAT'S WHAT  
03:17PM 24 DR. YOUNG WAS TALKING ABOUT.

03:17PM 25 LET'S GO TO SLIDE 538, MR. ALLEN.



03:17PM 1 OKAY. SO DR. BURNES ON CROSS, HE TESTIFIED THAT HE HAD  
03:17PM 2 BEEN USING OR IT'S PROBABLY THE CASE THAT HE HAD BEEN USING  
03:18PM 3 THERANOS FOR SOME PATIENTS FOR ABOUT A YEAR PRIOR TO  
03:18PM 4 DR. ELLSWORTH'S TEST.

03:18PM 5 AND THEN THE QUESTION PUT TO HIM WAS, AND FOR THOSE OTHER  
03:18PM 6 PATIENTS THAT YOU SENT TO THERANOS THERE WERE NO OTHER ISSUES;  
03:18PM 7 CORRECT?

03:18PM 8 HE SAID NO, NONE THAT I COULD FIND.

03:18PM 9 AND THE QUESTION WAS, AND YOU HAD FOUND THE OTHER RESULTS  
03:18PM 10 FROM THERANOS BEFORE THE ELLSWORTH RESULT THAT WE'LL TALK ABOUT  
03:18PM 11 IN A MINUTE, TO BE ACCURATE AND RELIABLE AS FAR AS YOU COULD  
03:18PM 12 TELL?

03:18PM 13 AND HE SAID I COULDN'T FIND ANY TESTS THAT WERE  
03:18PM 14 CONCERNING.

03:18PM 15 SO JUST LIKE DR. ZACHMAN, DR. BURNES DIDN'T HAVE ANY OTHER  
03:18PM 16 ISSUES WITH THERANOS FOR ANY OTHER PATIENT.

03:18PM 17 SO, AGAIN, WE'RE TALKING ABOUT AN UNFORTUNATE COUPLE OF  
03:18PM 18 ERRORS IN THE CASE OF DR. ELLSWORTH.

03:18PM 19 BUT THE LEVEL OF PROOF THAT YOU NEED TO SCIENTIFICALLY  
03:18PM 20 DECIDE THAT PSA IS A BAD TEST, IS A BAD ASSAY, YOU WOULD HAVE  
03:18PM 21 TO GET THE DATA, DO SOME KIND OF SCIENTIFIC METHODOICAL OR  
03:18PM 22 RIGOROUS, AND THEN YOU COULD ANALYZE THAT AND YOU COULD MAKE A  
03:18PM 23 CONCLUSION.

03:18PM 24 AND I'LL JUST REMIND THE JURY OF WHAT I SAID YESTERDAY,  
03:18PM 25 THAT'S WHAT THERANOS HAD TO DO. THAT'S WHAT MR. BALWANI WAS

03:19PM 1 INFORMED THAT THERANOS HAD TO DO WHEN THEY WERE TRYING TO GET  
03:19PM 2 FDA APPROVAL TO PROVE THAT ONE ASSAYS WORKED, RIGHT?

03:19PM 3 AND THE GOVERNMENT IS PRESENTING DR. ELLSWORTH, WHICH WE  
03:19PM 4 SYMPATHIZE WITH THAT. NO ONE WANTS TO SEE ANYONE GET AN  
03:19PM 5 INACCURATE TEST.

03:19PM 6 BUT IN THIS TRIAL WE'RE NOT TALKING ABOUT THE LABORATORY  
03:19PM 7 MADE AN ERROR AND WE CAN FIND ONE PATIENT.

03:19PM 8 AND I'LL SAY THIS. IF THE THERANOS TESTING ON ITS DEVICES  
03:19PM 9 AND COMMERCIAL DEVICES WAS REALLY SO BAD LIKE THE GOVERNMENT  
03:19PM 10 SAID, WHY AREN'T THERE PATIENTS LINED UP AROUND THE BLOCK OF  
03:19PM 11 THE COURTHOUSE WAITING TO TESTIFY HERE? WHERE ARE THEY?

03:19PM 12 WHY IS THE GOVERNMENT, AFTER A LENGTHY INVESTIGATION,  
03:19PM 13 CALLING FOUR PEOPLE, TWO OF WHICH, MS. TOMPKINS AND  
03:19PM 14 MR. BINGHAM, HAD THEIR TESTING ON COMMERCIAL DEVICES AND THE  
03:19PM 15 OTHER TWO, MS. GOULD AND DR. ELLSWORTH, HAVING THEIR TESTS ON  
03:19PM 16 THERANOS DEVICES, BUT THEN WITH MS. GOULD THEY WERE NOT EVEN  
03:19PM 17 SURE THERE WAS A DEVICE PROBLEM, IT WAS A TRANSCRIPTION ERROR.

03:20PM 18 SO WHERE ARE THESE PATIENTS LINED UP AROUND THE BLOCK  
03:20PM 19 WAITING TO TESTIFY ABOUT THEIR INACCURATE RESULTS? THEY'RE NOT  
03:20PM 20 HERE.

03:20PM 21 DR. BURNES, ON THAT SAME POINT, TALKED ON REDIRECT  
03:20PM 22 EXAMINATION WHEN THE GOVERNMENT WAS EXAMINING HIM ABOUT  
03:20PM 23 LABORATORY ERRORS. AND THE QUESTION PUT TO HIM WAS, "I THINK  
03:20PM 24 YOU SAID YOU HAD AN EXPERIENCE WHERE THERE WERE RESULTS THAT  
03:20PM 25 YOU QUESTIONED THAT CAME FROM LABCORP; IS THAT RIGHT?"

03:20PM 1 AND HE SAID -- THIS IS WHEN THE GOVERNMENT WAS QUESTIONING  
03:20PM 2 HIM. "IT WAS MULTIPLE LABS.

03:20PM 3 "I'M SORRY. IT WAS MULTIPLE LABS?

03:20PM 4 "IT WAS ABOUT FOUR IN ONE WEEK."

03:20PM 5 SO HE HAD AN EXPERIENCE WITH LABCORP WITH AN ASSAY CALLED  
03:20PM 6 CREATINE WHERE HE HAD FOUR PROBLEMS IN ONE WEEK WITH LABCORP,  
03:20PM 7 FOUR IN ONE WEEK, AND WE HAD FOUR PATIENTS THAT CAME ON THE  
03:20PM 8 STAND HERE AT TRIAL IN THE WHOLE TWO YEARS OR SO THAT THERANOS  
03:20PM 9 WAS TESTING PATIENTS.

03:21PM 10 DR. ELLSWORTH ALSO TALKED ABOUT TO HIS KNOWLEDGE HOW AN  
03:21PM 11 ERROR OCCURRED AND THERE ARE DIFFERENT TYPES OF THINGS THAT  
03:21PM 12 COULD HAPPEN. HE UNDERSTOOD THAT THERE COULD BE AN ISSUE WITH  
03:21PM 13 SAMPLE INTEGRITY AND IT COULD BE A PROBLEM WITH HOW THE  
03:21PM 14 LABORATORY USES REAGENTS. IT COULD BE A MISTAKE USING EXPIRED  
03:21PM 15 REAGENTS, AND MANY OTHER THINGS.

03:21PM 16 SO THESE ARE JUST SOME OF THE THINGS THAT DR. BURNES  
03:21PM 17 TESTIFIED ABOUT THAT COULD CAUSE LAB ERROR. AND THAT'S,  
03:21PM 18 UNFORTUNATELY, A FACT OF LIFE IN THE LABORATORY INDUSTRY.

03:21PM 19 SO WHEN YOU BRING IN ONE PATIENT TO TESTIFY ABOUT PSA, YOU  
03:21PM 20 KNOW, THAT'S UNFORTUNATE, BUT THAT DOESN'T PROVE THE CASE,  
03:21PM 21 AND IT CERTAINLY DOESN'T PROVE THIS CASE BEYOND A REASONABLE  
03:21PM 22 DOUBT.

03:21PM 23 AGAIN, AS I SAID WITH MR. BINGHAM, I DO WANT TO PAUSE ON  
03:21PM 24 THIS ISSUE OF THE WIRE.

03:21PM 25 AND I SHOULD INCLUDE ERIN TOMPKINS. SO I DIDN'T MENTION

03:22PM 1 THIS A MINUTE AGO WHEN I WAS TALKING ABOUT ERIN TOMPKINS, BUT  
03:22PM 2 IT'S THE SAME ISSUE SO I'LL TALK ABOUT MS. TOMPKINS AND  
03:22PM 3 DR. ELLSWORTH TOGETHER.

03:22PM 4 SO BOTH OF THEIR COUNTS IN THE INDICTMENT HAVE TO DO WITH  
03:22PM 5 TRANSMISSION OF A LAB REPORT AND IT'S A FAXED LAB REPORT. SO  
03:22PM 6 THE INTERSTATE WIRE THAT THE GOVERNMENT IS CLAIMING EXISTS  
03:22PM 7 WOULD BE A FAX TRANSMISSION OF A LAB REPORT FROM THERANOS TO  
03:22PM 8 THESE PATIENTS.

03:22PM 9 THE PROBLEM IS THAT EVEN THOUGH ON THE THERANOS LAB REPORT  
03:22PM 10 THAT YOU'LL SEE WHEN YOU DELIBERATE, IT HAS THE ADDRESS OF  
03:22PM 11 THERANOS IN SCOTTSDALE, ARIZONA, AND THEN IT HAS A FAX NUMBER  
03:22PM 12 THAT IS A 650 NUMBER WHICH WE KNOW IS LOCAL HERE IN CALIFORNIA.

03:22PM 13 BUT THEN IT SAYS CUSTOMER SERVICE. IT HAS A CUSTOMER  
03:22PM 14 SERVICE WEBSITE TAG.

03:22PM 15 SO WE DON'T KNOW IF THAT WAS REALLY THE FAX NUMBER WHERE  
03:22PM 16 THE FAX CAME FROM. IT'S A LETTERHEAD AT THE VERY TOP OF THOSE  
03:22PM 17 REPORTS.

03:22PM 18 AND IT MIGHT MAKE SENSE TO BRING UP ONE SO IT'S MAYBE MORE  
03:23PM 19 CLEAR WHAT I'M TALKING ABOUT.

03:23PM 20 MR. ALLEN, CAN YOU BRING UP EXHIBIT 5483.

03:23PM 21 RIGHT. THANK YOU.

03:23PM 22 AND IF YOU LOOK AT THAT EXHIBIT, AND JUST SO IT'S CLEAR  
03:23PM 23 WHILE I'M DESCRIBING IT, IF YOU HIGHLIGHT THE VERY TOP.

03:23PM 24 THAT'S WHAT I WAS JUST SAYING. YOU'VE GOT THIS  
03:23PM 25 SCOTTSDALE ROAD, SCOTTSDALE, ARIZONA ADDRESS. THERE'S AN 855

03:23PM 1 NUMBER FOR THE LAB.

03:23PM 2 AND THEN THERE'S A 650 NUMBER FOR THE -- FOR SOMETHING  
03:23PM 3 THAT IS A FAX NUMBER.

03:23PM 4 BUT THEN IT SAYS CUSTOMER SUPPORT AT THERANOS, SO MAYBE  
03:23PM 5 THAT'S THE CUSTOMER SUPPORT NUMBER. I'M NOT SURE.

03:23PM 6 BUT THEN AT THE TOP IT SAYS THERANOS FAX SERVER AND  
03:23PM 7 THERE'S NO PHONE NUMBER.

03:23PM 8 SO IT COULD BE -- CERTAINLY IT'S POSSIBLE THAT THE FAX  
03:24PM 9 CAME FROM A 650 NUMBER, AND IF THAT WERE TRUE, THEN IT WOULD BE  
03:24PM 10 AN INTERSTATE WIRE BECAUSE IT WOULD GO FROM CALIFORNIA TO  
03:24PM 11 ARIZONA.

03:24PM 12 BUT IF IT'S NOT THAT 650 NUMBER THAT IS PRINTED ON THE  
03:24PM 13 LETTERHEAD, THEN WE JUST DON'T KNOW.

03:24PM 14 SO, AGAIN, WE'RE AT A CRIMINAL TRIAL AND IT'S MY JOB TO  
03:24PM 15 POINT THESE THINGS OUT. BUT THIS IS AN ELEMENT OF A FEDERAL  
03:24PM 16 CRIMINAL OFFENSE. SO I'VE GOT TO POINT OUT FOR MS. TOMPKINS,  
03:24PM 17 AND ALSO FOR DR. ELLSWORTH, IT'S THE SAME FAX TAG INFORMATION  
03:24PM 18 WHEN YOU LOOK AT HIS REPORT.

03:24PM 19 WE DON'T KNOW FOR SURE. AND WE DON'T KNOW BEYOND A  
03:24PM 20 REASONABLE DOUBT THAT THAT ELEMENT IS MET.

03:24PM 21 AND AS YOU'LL HEAR WHEN JUDGE DAVILA INSTRUCTS YOU, THE  
03:24PM 22 GOVERNMENT HAS TO MEET ITS BURDEN OF PROVING THIS CASE BEYOND A  
03:24PM 23 REASONABLE DOUBT ON EVERY SINGLE ELEMENT OF EVERY COUNT OF THIS  
03:24PM 24 INDICTMENT.

03:24PM 25 OKAY. IN TERMS OF PATIENTS IN GENERAL, THE QUESTION, OR

03:25PM 1 ONE OF THE QUESTIONS THAT YOU ULTIMATELY HAVE TO ANSWER, AGAIN  
03:25PM 2 BEYOND A REASONABLE DOUBT, IS DID MR. BALWANI INTEND TO DEFRAUD  
03:25PM 3 PATIENTS? IN OTHER WORDS, DID HE INTEND TO DECEIVE AND CHEAT  
03:25PM 4 THEM OUT OF THEIR MONEY?

03:25PM 5 IT'S NOT JUST ABOUT DID THEY GET A BAD LAB TEST OR WAS  
03:25PM 6 THERE AN ERROR MADE OR WAS SOMEONE UNFORTUNATELY GIVEN  
03:25PM 7 INFORMATION THAT WASN'T QUITE RIGHT ABOUT THEIR BLOOD TEST  
03:25PM 8 RESULT?

03:25PM 9 IN ORDER TO BE GUILTY, IN ORDER FOR THE GOVERNMENT TO  
03:25PM 10 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT, THE GOVERNMENT HAS  
03:25PM 11 TO SHOW THAT HE INTENDED TO CHEAT THESE PATIENTS, NOT JUST ANY  
03:25PM 12 PATIENT, BUT THE PATIENTS WHO ACTUALLY PAID THEIR OWN MONEY AT  
03:25PM 13 WALGREENS. THEY HAVE TO SHOW THAT HE INTENDED TO DECEIVE OR  
03:25PM 14 CHEAT THEM OUT OF THEIR MONEY.

03:25PM 15 AND AS WE'VE SEEN, THE PRICE WAS AROUND \$35.

03:25PM 16 SO IS THERE EVIDENCE IN THIS CASE THAT MR. BALWANI'S  
03:25PM 17 INTENT HERE WAS TO GET THAT \$35?

03:25PM 18 AND FIRST OF ALL, AS YOU KNOW, THE THERANOS PRICE WAS  
03:26PM 19 PRETTY LOW COMPARED TO OTHER LABS. THEY ACTUALLY PUBLISH THEIR  
03:26PM 20 LABS.

03:26PM 21 BUT IF YOU GO TO SLIDE 545, MR. ALLEN.

03:26PM 22 AS MS. SPIVEY TESTIFIED, MR. BALWANI DIDN'T EVEN -- I  
03:26PM 23 SHOULD SAY THERANOS DIDN'T EVEN ASK WALGREENS FOR THE MONEY,  
03:26PM 24 BECAUSE WHEN THE PATIENTS WENT TO WALGREENS, THEY PAID  
03:26PM 25 WALGREENS, AND WALGREENS OWED THERANOS SOME MONEY, BUT THERANOS

03:26PM 1 NEVER GOT IT.

03:26PM 2 SO WHAT KIND OF INTENT TO DEFRAUD, DECEIVE, OR CHEAT  
03:26PM 3 PATIENTS OUT OF THEIR MONEY IS THAT IF YOU DON'T EVEN BOTHER  
03:26PM 4 GETTING IT? IT DOESN'T MAKE ANY SENSE.

03:26PM 5 SO JUST FROM AN INTENT STANDPOINT, EVEN IF YOU PUT ASIDE  
03:26PM 6 ALL OF THE OTHER ELEMENTS THAT HAVE TO BE PROVEN BEYOND A  
03:26PM 7 REASONABLE DOUBT, IT JUST DOESN'T FLY.

03:26PM 8 AND THAT'S THE DEFINITION OF INTENT TO DEFRAUD THAT I JUST  
03:26PM 9 TOLD YOU, BUT THAT'S THE WAY THAT IT WILL LOOK TO YOU IN THE  
03:26PM 10 JURY INSTRUCTION WHEN JUDGE DAVILA INSTRUCTS YOU AS THE JURY.

03:26PM 11 OKAY. I WANT TO TURN TO A DIFFERENT TOPIC, AND THAT IS  
03:27PM 12 THE LABORATORY INFORMATION SYSTEM AT THERANOS.

03:27PM 13 AND YOU HEARD ABOUT THIS PRETTY LATE IN THE TESTIMONY.  
03:27PM 14 THIS WAS TESTIMONY FROM AN EXPERT WITNESS THAT WE CALLED NAMED  
03:27PM 15 RICHARD SONNIER.

03:27PM 16 BUT FIRST LET'S TALK ABOUT WHAT IS THE LABORATORY  
03:27PM 17 INFORMATION SYSTEM AND WHY IT IS IMPORTANT.

03:27PM 18 SO WE KNOW FROM THE EVIDENCE IN THIS CASE THAT THERE IS  
03:27PM 19 OVER A MILLION, WE DON'T KNOW HOW MUCH OVER A MILLION, IT COULD  
03:27PM 20 BE MANY MILLIONS, BUT THERE'S A MILLION PLUS RESULTS. AND  
03:27PM 21 THAT'S ONLY IN THE NEWARK LAB. IT DOESN'T EVEN INCLUDE THE  
03:27PM 22 ARIZONA LAB.

03:27PM 23 AND THERE ARE 269 UNIQUE TESTS THAT WERE DONE AT THERANOS,  
03:27PM 24 DIFFERENT BLOOD ASSAYS, AND THE GOVERNMENT CALLED FOUR  
03:27PM 25 PATIENTS. SO THOSE ARE THE GENERAL STATISTICS.

03:27PM 1 WE KNOW THE GOVERNMENT NEVER OBTAINED THE MILLION PLUS  
03:27PM 2 PATIENT RESULTS TO DO ANY KIND OF ANALYSIS, OR ANY PART OF  
03:27PM 3 THAT, EVEN A STATISTICALLY SIGNIFICANT SAMPLE OF THAT.

03:28PM 4 THEY PRESENTED NO SCIENTIFIC ANALYSIS OF THE ACCURACY AND  
03:28PM 5 RELIABILITY OF THE TESTS BASED ON THAT.

03:28PM 6 AND THEY PRESENTED, AS I SAID BEFORE, THE FDA CLEARANCE  
03:28PM 7 THAT THERANOS GETS, AS MR. BALWANI WAS INFORMED, REQUIRED  
03:28PM 8 EXTENSIVE SCIENTIFIC ANALYSIS JUST TO PROVE ONE ASSAY RUNNING  
03:28PM 9 ON THE THERANOS SYSTEM WAS GOOD ENOUGH FOR THE FDA.

03:28PM 10 SO THAT'S THE BASELINE.

03:28PM 11 DR. ROSENDORFF TESTIFIED QUITE A BIT ABOUT LIS AND WHY IT  
03:28PM 12 WAS IMPORTANT.

03:28PM 13 SO THE QUESTION PUT TO HIM ON CROSS-EXAMINATION, SO IF YOU  
03:28PM 14 WANTED TO LOOK UP ANY PATIENT RESULT YOU COULD DO THAT FROM  
03:28PM 15 LIS?

03:28PM 16 HE SAID CORRECT, CORRECT.

03:28PM 17 AND IF YOU WANTED TO KNOW ALL OF THE, FOR EXAMPLE, HCG  
03:28PM 18 TESTS DONE IN A CERTAIN MONTH, YOU COULD DO THAT WITH LIS;  
03:28PM 19 RIGHT?

03:28PM 20 CORRECT.

03:28PM 21 LET ME PAUSE THERE FOR A MOMENT.

03:28PM 22 IF MS. GOULD DID IN FACT GET AN INACCURATE TEST BASED ON  
03:28PM 23 SOMETHING WITH THE THERANOS EDISON MACHINE, AS OPPOSED TO  
03:29PM 24 TRANSCRIPTION ERRORS, LET'S ASSUME THAT FOR A MINUTE, WITH LIS  
03:29PM 25 YOU COULD LOOK AT EVERY OTHER PATIENT WHO GOT HCG RESULTS IN



03:29PM 1 OCTOBER OF 2014 WHEN MS. GOULD HAD HERS.

03:29PM 2 WE KNOW THERE WAS A VERY GOOD AAP HEAD-TO-HEAD COMPARISON  
03:29PM 3 THAT MONTH, SO THAT SUGGESTS THE EDISON IS WORKING JUST FINE.

03:29PM 4 BUT IF WE REALLY WANTED TO ANALYZE THIS, WE CAN LOOK AT  
03:29PM 5 WHAT ABOUT ALL OF THE OTHER PATIENTS IN OCTOBER? WHAT ABOUT  
03:29PM 6 SEPTEMBER? WHAT ABOUT NOVEMBER? AND WERE THOSE ISSUES? WERE  
03:29PM 7 THERE MORE ISSUES? WAS THIS A ONE-OFF OR IS IT MULTIPLE ISSUES  
03:29PM 8 WITH MULTIPLE PATIENTS?

03:29PM 9 AND THE GOVERNMENT HASN'T PRESENTED THAT BECAUSE THEY  
03:29PM 10 CAN'T BECAUSE THEY DIDN'T GET THE LIS.

03:29PM 11 BUT DR. ROSENDORFF ACKNOWLEDGES THAT THAT'S WHAT YOU COULD  
03:29PM 12 DO WITH THE LIS.

03:29PM 13 THE LIST GOES ON. YOU WOULD DO A TECHNICAL REVIEW TO SEE  
03:29PM 14 IF THINGS HAD GONE WRONG AND TRY TO UNDERSTAND WHAT HAPPENED?

03:29PM 15 YES.

03:29PM 16 AND WHEN AN ISSUE AROSE, YOU YOURSELF OR SOMEBODY ELSE  
03:30PM 17 WOULD PULL INFORMATION FROM THE LIS TO PROVIDE DATA TO ADDRESS  
03:30PM 18 THE SITUATION?

03:30PM 19 HE SAID YES.

03:30PM 20 AND THAT TYPE OF DATA COULD INCLUDE THE SPECIFIC ASSAY  
03:30PM 21 THAT WAS USED?

03:30PM 22 YES.

03:30PM 23 AND THE MACHINE THAT IT WAS RUN ON?

03:30PM 24 SO IF HE WANTED TO KNOW, IF YOU HAVE SOME DOUBT ABOUT

03:30PM 25 MR. BINGHAM, FOR EXAMPLE, WHAT TYPE OF MACHINE? WAS IT DREW3?

03:30PM 1 WAS IT SOMETHING ELSE? YOU CAN LOOK AT LIS AND YOU'D KNOW WHAT  
03:30PM 2 TYPE OF MACHINE MR. BINGHAM'S RESULT WAS RUN ON.

03:30PM 3 BUT WE DON'T HAVE THAT.

03:30PM 4 DR. ROSENDORFF GOES ON.

03:30PM 5 THE LIS WOULD TELL YOU THE REFERENCE RANGE, THE TIME OF  
03:30PM 6 ARRIVAL IN THE LAB, THE TIME THE REPORT WAS RELEASED, THE  
03:30PM 7 ACTUAL RESULTS, OF COURSE, THE QUALITY CONTROL INFORMATION.

03:30PM 8 AND THEN THE QUESTION PUT TO HIM WAS, YOU WERE ABLE TO LOG  
03:30PM 9 IN, AND YOU DID LOG INTO THE LIS SYSTEM TO REVIEW DATA ON YOUR  
03:30PM 10 OWN?

03:30PM 11 HE SAID YES I DID.

03:30PM 12 SO THIS WAS A TOOL THAT DR. ROSENDORFF USED WHEN HE WAS  
03:30PM 13 THE LAB DIRECTOR AT THERANOS.

03:30PM 14 AND THE QUALITY CONTROL INFORMATION IS WORTH PAUSING ON  
03:31PM 15 FOR A MINUTE. AND THE GOVERNMENT HAS TOLD YOU IN QUITE A LOT  
03:31PM 16 OF TIME HERE THAT QUALITY CONTROL IS LIKE REALLY BAD AT  
03:31PM 17 THERANOS AND THIS IS IMPORTANT.

03:31PM 18 WELL, IF WE WANTED TO KNOW WHAT REALLY HAPPENED, IS MARCH  
03:31PM 19 REALLY A TYPICAL MONTH WHERE THEY SHOWED YOU THAT SPREADSHEET?  
03:31PM 20 IS MR. GEE RIGHT ABOUT THE 2,9 PERCENT QUALITY CONTROL FAILURE  
03:31PM 21 AS OPPOSED TO SOME HIGHER NUMBER? WHAT ABOUT OTHER MONTHS?

03:31PM 22 WHAT ABOUT SPECIFIC ASSAYS? WHAT ABOUT THE QUALITY  
03:31PM 23 CONTROL FOR HCG? WHAT ABOUT THE QUALITY CONTROL FOR PSA? AND  
03:31PM 24 SO ON AND SO ON.

03:31PM 25 THIS IS THE TYPE OF INFORMATION THAT YOU WOULD HAVE IN LIS

03:31PM 1 THAT WE DON'T HAVE ACCESS TO, AND I'LL TALK ABOUT WHY THAT IS  
03:31PM 2 IN A MINUTE.

03:31PM 3 DR. ROSENDORFF GOES ON THOUGH.

03:31PM 4 SO THE QUESTION PUT TO HIM WAS, AND ESSENTIALLY, WHEN AN  
03:31PM 5 INQUIRY CAME IN, YOU WOULD USE LIS TO DO AN INVESTIGATION, TO  
03:31PM 6 DO AN INVESTIGATION?

03:31PM 7 HE SAYS YES.

03:32PM 8 SO DR. ROSENDORFF HIMSELF IS USING LIS TO INVESTIGATE.

03:32PM 9 WOULDN'T IT MAKE SENSE FOR THE GOVERNMENT TO DO THEIR  
03:32PM 10 INVESTIGATION USING THE DATA AS WELL?

03:32PM 11 THE QUESTION PUT TO DR. ROSENDORFF, AND ULTIMATELY  
03:32PM 12 DETERMINE WHETHER YOU COULD TELL THE PHYSICIAN THE TEST IS  
03:32PM 13 VALID OR, YOU KNOW, SOMETHING ELSE SHOULD BE DONE OR THAT SORT  
03:32PM 14 OF THING?

03:32PM 15 HE SAYS CORRECT.

03:32PM 16 AND THEN THE QUESTION PUT TO HIM ON THIS PAGE OF THE  
03:32PM 17 TRANSCRIPT IS, IF THERE WAS A PATIENT ON A PARTICULAR DAY WHERE  
03:32PM 18 THERE WAS AN INQUIRY, AND YOU WANTED TO KNOW ALL OF THE OTHER  
03:32PM 19 PATIENTS WHO HAD THAT SAME ASSAY RUN, COULD YOU LOOK AT LIS AND  
03:32PM 20 LEARN THAT INFORMATION; RIGHT?

03:32PM 21 HE SAYS YES I COULD.

03:32PM 22 OKAY. AND YOU COULD COMBINE THE INFORMATION FROM LIS WITH  
03:32PM 23 OTHER INFORMATION ABOUT HOW THE PATIENT PRESENTED, AND SO  
03:32PM 24 FORTH, TO COME UP WITH SOME CONCLUSIONS ABOUT WHAT HAD  
03:33PM 25 OCCURRED?

03:33PM 1 HE SAID YES.

03:33PM 2 AND, IN FACT, YOU SAID THE OTHER DAY WHEN I WAS  
03:33PM 3 QUESTIONING YOU, THE QC DATA WAS ONE THE THINGS IN THE LIS;  
03:33PM 4 CORRECT?

03:33PM 5 YES.

03:33PM 6 AND IF WE WANTED TO KNOW EVERYTHING ABOUT THE QC DURING  
03:33PM 7 ANY TIME PERIOD, WE COULD GO TO THE LIS AND LOOK AT THAT;  
03:33PM 8 RIGHT?

03:33PM 9 HE SAYS YES.

03:33PM 10 ONE THING TO REMEMBER HERE, BECAUSE THE GOVERNMENT MAY  
03:33PM 11 TELL YOU THIS IN REBUTTAL, THEY MAY TRY TO SAY, WELL, THE LIS  
03:33PM 12 WILL TELL YOU THE PATIENT RESULT AND MIGHT TELL YOU SOMETHING  
03:33PM 13 ABOUT QC -- ACTUALLY, IT WILL TELL YOU EVERYTHING ABOUT QC --  
03:33PM 14 BUT THEY'LL SAY, MAYBE IN THEIR REBUTTAL, WELL, BUT IF YOU JUST  
03:33PM 15 HAVE A PATIENT RESULT, HOW WOULD YOU KNOW IF IT WAS AN ACCURATE  
03:33PM 16 RESULT OR NOT, RIGHT?

03:33PM 17 AND SO IF SOMEONE HAS A VALUE OF 750 ON A PLATELET COUNT  
03:33PM 18 TEST, HOW DO YOU KNOW IF THAT'S CORRECT OR NOT?

03:33PM 19 WELL, DR. ROSENDORFF ACKNOWLEDGED THIS. OF COURSE YOU  
03:33PM 20 MIGHT NEED OTHER INFORMATION. YOU MIGHT HAVE TO GO TO THE  
03:33PM 21 PATIENT, YOU MIGHT HAVE TO GET OTHER RECORDS, BUT LIS IS AN  
03:33PM 22 IMPORTANT PART OF THAT INVESTIGATION WHICH EVEN DR. ROSENDORFF  
03:34PM 23 HAD TO DO WHEN HE GOT A PHYSICIAN INQUIRY.

03:34PM 24 SO IT'S EXTREMELY IMPORTANT THAT IN A SCIENTIFIC FRAUD  
03:34PM 25 CASE, WHAT THIS IS, YOU NEED TO HAVE THE SCIENTIFIC DATA.

03:34PM 1 AND IT ACTUALLY GOES BEYOND JUST THE PATIENT -- THE SET OF  
03:34PM 2 PATIENT COUNTS AND THE PATIENT CONSPIRACY COUNT. IT GOES TO  
03:34PM 3 THE INVESTOR COUNTS, THE CONSPIRACY AND THE WIRE FRAUD COUNTS,  
03:34PM 4 TOO.

03:34PM 5 AND THE REASON IS THAT FUNDAMENTALLY WHAT THE GOVERNMENT  
03:34PM 6 IS SAYING HERE, IS THAT MR. BALWANI REPRESENTED TO INVESTORS  
03:34PM 7 THAT THE TECHNOLOGY WORKED, AND THE GOVERNMENT IS CLAIMING IT  
03:34PM 8 DIDN'T, RIGHT?

03:34PM 9 WE'VE SHOWN YOU A LOT OF OTHER EVIDENCE WHY MR. BALWANI  
03:34PM 10 BELIEVED REASONABLY THAT IT DID WORK AND THAT, IN FACT, IT DID,  
03:34PM 11 BUT THE GOVERNMENT IS SAYING FUNDAMENTALLY IN THEIR  
03:34PM 12 REPRESENTATION FROM INVESTORS IS THAT THE TECHNOLOGY DIDN'T  
03:34PM 13 WORK AND THE INVESTORS WERE LURED INTO THIS THINKING THAT WAS  
03:34PM 14 THE CASE.

03:34PM 15 WELL, LIST WOULD BE VERY VALUABLE IF YOU WANTED TO DO AN  
03:34PM 16 ANALYSIS, DOES THE THERANOS TECHNOLOGY WORK? WE COULD DO THAT  
03:34PM 17 IN A RIGOROUS METHODOICAL WAY, AND WE'VE LOST THAT OPPORTUNITY.

03:35PM 18 GO TO THE LAST SLIDE.

03:35PM 19 THIS IS WHEN MR. BALWANI WAS INFORMED. YOU'VE SEEN THIS  
03:35PM 20 BEFORE. ALL OF THE WORK IT TAKES TO PROVE THAT AN ASSAY WORKS  
03:35PM 21 IN THE EYES OF THE FDA, NOTHING EVEN APPROACHING THAT EVEN IF  
03:35PM 22 YOU DIDN'T HAVE TO DO ALL OF THAT, NOTHING EVEN APPROACHING  
03:35PM 23 THAT AT ALL WAS EVER DONE IN THIS CASE, IN A CASE WHERE THEY'RE  
03:35PM 24 PROSECUTING MR. BALWANI FOR FEDERAL CRIMINAL OFFENSES.

03:35PM 25 LET'S GO TO THE NEXT SLIDE.

SO JUST SUMMING UP WHY LIS MATTERS.

THERE'S THE ABILITY TO LOOK UP ANY PATIENT RESULTS;

THERE'S THE ABILITY TOO LOOK UP ALL TESTS IN A CERTAIN  
TIMEFRAME, FOR EXAMPLE, HCG IN OCTOBER OF 2014;

IT ENABLES A TECHNICAL REVIEW TO INVESTIGATE ISSUES AND  
REVIEW ALL DATA ACROSS THE ITEMS THAT ARE LISTED THERE,  
INCLUDING THE MACHINE THAT THE TEST WAS RUN ON.

AND, AS I SAID, DR. ROSENDORFF RELIED ON LIS FOR  
COMMUNICATING WITH PHYSICIANS ABOUT THE ACCURACY OF TESTING.

LET'S TURN TO MR. SONNIER.

WHAT HAPPENED HERE? WHY DON'T WE HAVE LIS?

AS YOU HEARD -- AND THIS IS WHAT MR. SONNIER WAS  
EXPLAINING AS THE BASIS OF HIS OPINION. HE WAS PROVIDED WITH A  
LOT OF MATERIALS, AS HE SAID, AND HE REVIEWED THOSE MATERIALS.

ONE OF THE THINGS THAT HE SAID OCCURRED IS THAT -- AND  
THERE'S NO DISPUTE ABOUT THIS I DON'T THINK -- THERANOS WAS  
REQUESTED BY THE GOVERNMENT WITH SUBPOENAS, GRAND JURY  
SUBPOENAS, THAT YOU SHOULD PRODUCE A COPY OF THE LIS.

AND ULTIMATELY NEAR THE END OF AUGUST, THEY PRODUCED A  
HARD DRIVE, A USB DRIVE I THINK IT WAS CALLED, THAT SUPPOSEDLY  
CONTAINED OR MAYBE DID CONTAIN A COPY OF THE LIS.

AS WE'LL SEE IN A MINUTE, THE GOVERNMENT'S TECHNICAL TEAM  
COULD NOT OPEN IT.

THE DEFENSE WAS ALSO INTERESTED IN ACCESSING THIS LIS DATA  
SO WE COULD SEE WHAT IT SAID. AND WE HAD REQUESTED THAT

03:37PM 1 MR. SONNIER TRY TO ACCESS THAT SAME COPY. HE TRIED IT. HE  
03:37PM 2 COULD NOT ACCESS THE COPY EITHER.

03:37PM 3 SO, SO FAR THE GOVERNMENT HAS A COPY, THEY CAN'T ACCESS  
03:37PM 4 IT; THE DEFENSE HAS A COPY, WE CAN'T ACCESS IT, EITHER. AND  
03:37PM 5 THAT'S WHAT MR. SONNIER SAID HE UNDERSTOOD FROM ALL OF THE  
03:37PM 6 MATERIAL THAT HE REVIEWED.

03:37PM 7 LET'S GO TO THE NEXT SLIDE.

03:37PM 8 THE GOVERNMENT UNDERSTOOD THAT THEY COULDN'T ACCESS THIS  
03:37PM 9 COPY NO LATER THAN OCTOBER OF 2018. AND THIS IS THE EMAIL  
03:37PM 10 WHERE THE GOVERNMENT IS INFORMED BY THEIR OWN EMPLOYEE,  
03:37PM 11 SUTTON PEIRCE. AND IT'S AN EMAIL ON OCTOBER 5TH, 2018 TO  
03:37PM 12 MR. SCHENK, TO MR. LEACH, AND TO MR. BOSTIC WITH A COPY TO  
03:37PM 13 OTHER PEOPLE AT THE U.S. ATTORNEY'S OFFICE.

03:38PM 14 AND IT SAYS, "POSSIBLE ROUTES FORWARD."

03:38PM 15 WHAT ARE THE POSSIBLE ROUTES FORWARD?

03:38PM 16 PUSH BACK ON DEFENSE AND SEE IF THEY CAN BE PERSUADED TO  
03:38PM 17 PRODUCE THIS IN A MANNER THAT CAN BE VIEWED.

03:38PM 18 I'M GOING TO COME BACK TO THAT IN A MINUTE BECAUSE I WANT  
03:38PM 19 TO MAKE IT CLEAR THAT DEFENSE -- WE OBVIOUSLY CALL OURSELVES  
03:38PM 20 THE DEFENSE. I'M GOING TO EXPLAIN WHY THAT'S NOT A REFERENCE  
03:38PM 21 TO MR. BALWANI'S DEFENSE TEAM. THIS IS A REFERENCE TO  
03:38PM 22 THERANOS.

03:38PM 23 MR. BALWANI HAD LEFT THERANOS TWO YEARS -- MORE THAN TWO  
03:38PM 24 YEARS BEFORE. MR. BALWANI LEFT THERANOS, AND MS. SPIVEY  
03:38PM 25 TESTIFIED TO THIS, IN MAY OF 2016. HE HAD A CONSULTING

03:38PM 1 RELATIONSHIP UNTIL JULY OF 2016, BUT NO LATER THAN JULY OF 2016  
03:38PM 2 MR. BALWANI WAS GONE FROM THERANOS.

03:38PM 3 SO HE WAS NOT AT THERANOS WHEN THIS COPY AND THIS  
03:38PM 4 DISMANTLING OF THE LIS SYSTEM WAS TAKING PLACE. AND THAT'S  
03:38PM 5 MS. SPIVEY'S TESTIMONY ON THAT POINT.

03:38PM 6 IF WE CAN GO BACK FOR A MINUTE, MR. ALLEN, JUST WHILE IT'S  
03:38PM 7 UP HERE.

03:38PM 8 DEPARTURE WAS MAY 11TH, 2016.

03:39PM 9 AND THEN SHE TESTIFIED, JUST WHILE WE HAVE THIS TRANSCRIPT  
03:39PM 10 UP, SHE WENT TO SAY GOODBYE. SHE SAID THAT SHE WISHED HIM  
03:39PM 11 WELL. AND MS. SPIVEY TEARED UP BECAUSE SHE WAS SORRY TO SEE  
03:39PM 12 HIM GO.

03:39PM 13 BUT LET'S GO BACK TO THE PREVIOUS SLIDE YOU HAD,  
03:39PM 14 MR. ALLEN.

03:39PM 15 SO THEN THERE WERE THESE FOUR POSSIBLE ROUTES FORWARD THAT  
03:39PM 16 THE U.S. ATTORNEY'S OFFICE OWN EMPLOYEE IS NOTIFYING THEM  
03:39PM 17 ABOUT.

03:39PM 18 ONE IS SEE IF YOU CAN GET THEM PRODUCED IN A DIFFERENT  
03:39PM 19 MANNER.

03:39PM 20 I'LL JUST GO TO THE THIRD ONE REAL QUICK. CHECK WITH THE  
03:39PM 21 FBI. THEY MIGHT HAVE THE RESOURCES.

03:39PM 22 BUT THEN THE OTHER TWO ARE, THAT IS WHAT IS HIGHLIGHTED  
03:39PM 23 HERE, PERHAPS THEY'LL CONSIDER HANDING OVER THEIR PHYSICAL SQL  
03:39PM 24 SERVER AND WE CAN SET IT UP IN A WORK ROOM.

03:39PM 25 GO GET THE SERVERS AND LET'S SEE IF THAT WORKS.



03:39PM 1 AND THEN THE OTHER ONE IS IDENTIFY A VENDOR WHO COULD  
03:39PM 2 PROCESS THE MATERIAL.

03:39PM 3 WELL, MR. SONNIER IS ONE SUCH VENDOR, BUT THERE ARE  
03:39PM 4 OTHERS.

03:39PM 5 SO LET'S GO TO THE NEXT SLIDE.

03:40PM 6 I JUST WANT TO SHOW YOU A LITTLE BIT OF THE MISDIRECTION  
03:40PM 7 THAT WAS GOING ON HERE. THIS IS ON CROSS-EXAMINATION.

03:40PM 8 THE GOVERNMENT ASKED A QUESTION ABOUT -- TO MR. SONNIER.  
03:40PM 9 AND HE'S REPORTING TO THE GOVERNMENT THAT THE LIS DATABASE WAS  
03:40PM 10 ENCRYPTED BY SUNNY BALWANI AND SOMEONE NAMED  
03:40PM 11 SHEKAR CHANDRASEKARAN.

03:40PM 12 DO YOU SEE THAT?

03:40PM 13 YES.

03:40PM 14 SO THE GOVERNMENT IN THIS PARTICULAR EXCHANGE WAS POINTING  
03:40PM 15 OUT A DOCUMENT THAT THE -- THERE WAS A PERSON AT A FIRM CALLED  
03:40PM 16 DORSEY THAT WAS REPRESENTING WHAT REMAINED OF THERANOS AFTER IT  
03:40PM 17 NO LONGER EXISTED. THEY WERE CALLED THE ASSIGNEE.

03:40PM 18 BUT IN ANY EVENT, THIS DORSEY LAWYER WAS TALKING ABOUT --  
03:40PM 19 HIS KNOWLEDGE, THIS LAWYER, WAS THAT MR. BALWANI AND  
03:40PM 20 MR. CHANDRASEKARAN HAD ENCRYPTED THE DRIVE.

03:40PM 21 BUT LET'S JUST BE CLEAR WHAT IS GOING ON HERE. THIS WAS A  
03:40PM 22 QUESTION PUT TO MR. SONNIER. AND IF THE SUGGESTION WAS THAT  
03:40PM 23 MR. BALWANI HAD ANYTHING TO DO WITH THIS ENCRYPTION PROBLEM  
03:41PM 24 WHERE THE GOVERNMENT COULDN'T OPEN THE DRIVE AND THE DEFENSE  
03:41PM 25 COULDN'T EITHER, THAT IS NOT CORRECT.

MR. BALWANI LEFT THERANOS IN MAY OF 2016. AND SO THIS WAS GOING ON IN 2018. OF COURSE THE PATIENT DATABASE WITH ALL OF THE PATIENT INFORMATION WAS ENCRYPTED. OF COURSE MR. BALWANI, AS THE COO OF THE COMPANY, WOULD WANT THAT.

AT THIS TRIAL WE HAVE SEEN OVER AND OVER AGAIN, WHEN PATIENT RESULTS ARE BEING DISPLAYED, WE HAVE TO REDACT THEM BECAUSE WE DON'T WANT TO PUBLICLY DISPLAY FOR THE PUBLIC WATCHING THIS TRIAL, AND FOR EVEN YOU THE JURY, PEOPLE'S HEALTH INFORMATION.

SO, OF COURSE, THE DATABASE, WHILE IT EXISTED AT THERANOS WHILE MR. BALWANI WAS THERE, TWO YEARS LATER, OF COURSE, THIS WAS ENCRYPTED.

SO IF THIS QUESTION WAS MEANT TO SUGGEST THAT MR. BALWANI HAD ANYTHING TO DO WITH THIS ENCRYPTION PROBLEM THAT MR. SONNIER WAS TALKING ABOUT, THAT IS JUST MISDIRECTION.

LET'S GO TO THE NEXT SLIDE.

THIS IS THE POSSIBLE ROUTES FORWARD SLIDE THAT WE HAVE SEEN.

THIS IS THE EMAIL THAT THE GOVERNMENT PUT IN DURING THEIR CROSS-EXAMINATION OF MR. SONNIER.

IT SAYS, "HI SUTTON," THAT'S THE SAME EMPLOYEE WHO TOLD THEM TO GO GET THE SERVERS, SUTTON PEIRCE.

"I HAD A MEETING WITH THE AUSA'S," THAT'S MR. SCHENK, MR. BOSTIC, AND MR. LEACH. THOSE ARE THE ASSISTANT U.S. ATTORNEYS ASSIGNED TO THIS CASE, THE AUSA'S.

03:42PM 1 "I HAD A MEETING WITH THE AUSA'S ON THIS CASE REGARDING  
03:42PM 2 OUR OPTIONS AND WE ALL DECIDED TO DO THE FOLLOWING."

03:42PM 3 AND POSSIBLE ROUTES FORWARD ARE PUSH BACK ON DEFENSE AND  
03:42PM 4 SEE IF THEY CAN BE PRODUCE THIS IN A DIFFERENT MANNER AND THEN  
03:42PM 5 CHECK WITH THE FBI.

03:42PM 6 YOU CAN SEE AS A RESULT OF THIS MEETING THAT THEY  
03:42PM 7 ELIMINATED THE TWO OPTIONS OF GOING TO GET THE SERVERS OR GOING  
03:42PM 8 TO GET A VENDOR. SO FOR SOME REASON, UNKNOWN TO US, THEY RULED  
03:42PM 9 THOSE OUT AND THEY DECIDED NOT TO PURSUE THOSE OPTIONS.

03:42PM 10 LET'S GO TO THE NEXT SLIDE.

03:43PM 11 NOW, WHAT ABOUT THOSE TWO OPTIONS?

03:43PM 12 MR. SONNIER TESTIFIED THAT BASED ON THE EMAIL, THE FIRST  
03:43PM 13 ONE THAT IS BEING TALKED ABOUT IN THAT PART OF THE TESTIMONY IS  
03:43PM 14 THE OPTION OF GETTING THE SERVERS.

03:43PM 15 MR. SONNIER SAID, THIS OPTION -- THE QUESTION PUT TO HIM  
03:43PM 16 WAS, AND THIS OPTION, WOULD THAT HAVE WORKED?

03:43PM 17 HE SAID THIS WOULD HAVE WORKED.

03:43PM 18 AND HOW ABOUT THE THIRD BULLET, IDENTIFY A VENDOR, IS THAT  
03:43PM 19 ALSO AN OPTION THAT WAS NOT LISTED ON THE EXHIBIT?

03:43PM 20 YES.

03:43PM 21 WOULD THAT HAVE WORKED?

03:43PM 22 IT WOULD HAVE WORKED, YES.

03:43PM 23 SO MR. SONNIER TESTIFIED THAT EITHER GETTING THE SERVERS  
03:43PM 24 OR HIRING A VENDOR WHO MIGHT HAVE SAID THE SAME THING, THOSE  
03:43PM 25 WERE THE WAYS THAT WOULD HAVE WORKED TO RECOVER THE LIS IF THE

03:43PM 1 GOVERNMENT HAD DECIDED TO PURSUE THOSE INSTEAD OF RULING OUT  
03:43PM 2 THOSE OPTIONS FOR UNKNOWN REASONS.

03:43PM 3 AND IF YOU'RE REALLY INTERESTED IN THE TRUTH IN A  
03:44PM 4 SCIENTIFIC CASE WHERE YOU'RE TRYING TO TALK ABOUT LAB TESTING  
03:44PM 5 AND WHETHER IT'S BAD ON A WIDESPREAD BASIS, WHY NOT DO WHATEVER  
03:44PM 6 YOU CAN IN A FEDERAL CRIMINAL PROSECUTION TO GET THE SERVERS,  
03:44PM 7 AND IF THAT IS GOING TO HELP YOU AND YOU CAN ANALYZE THE DATA,  
03:44PM 8 THAT'S WHAT YOU NEED TO DO.

03:44PM 9 LET'S TALK ABOUT -- A LITTLE BIT MORE ABOUT MR. SONNIER.

03:44PM 10 BY THE WAY, MR. SONNIER, THAT'S UNREBUTTED EXPERT  
03:44PM 11 TESTIMONY. THE GOVERNMENT DID NOT CALL AN EXPERT. THEY DID  
03:44PM 12 NOT HAVE ANY ANSWER TO MR. SONNIER'S TESTIMONY AS AN EXPERT ON  
03:44PM 13 MICROSOFT SQL SERVERS THAT THIS METHOD OF GETTING THE SERVERS  
03:44PM 14 WOULD HAVE WORKED IF THE GOVERNMENT HAD PURSUED IT.

03:44PM 15 WELL, LET'S TALK ABOUT SOME OF THE OTHER THINGS THAT  
03:44PM 16 HAPPENED WITH MR. SONNIER. SO THERE WAS A SUGGESTION TO HIM  
03:44PM 17 THAT HE DIDN'T HAVE PERSONAL KNOWLEDGE AND IT WAS SOMEHOW JUST  
03:45PM 18 A HYPOTHETICAL THAT WAS PUT TO HIM.

03:45PM 19 HE SAID NO, ABSOLUTELY NOT. THIS IS A SQL SERVER, IT'S A  
03:45PM 20 KNOWN PRODUCT, IT'S WELL DOCUMENTED BY MICROSOFT, IT HAS  
03:45PM 21 WELL-KNOWN RECOVERY TECHNIQUES, AS ALL OF THE EQUIPMENT WHICH  
03:45PM 22 IT OPERATES.

03:45PM 23 GO TO THE NEXT SLIDE.

03:45PM 24 THE QUESTION PUT TO HIM ON DIRECT WAS WHAT ABOUT THE  
03:45PM 25 MISSING PASSWORD ISSUE? WOULD THAT AFFECT YOUR ABILITY TO

03:45PM 1 RECOVER THE DATA?

03:45PM 2 HE SAYS NO.

03:45PM 3 LET ME JUST PAUSE THERE FOR A MINUTE. SO APPARENTLY THIS  
03:45PM 4 HARD DRIVE COPY THAT WAS PROVIDED TO THE GOVERNMENT, AND ALSO  
03:45PM 5 TO THE DEFENSE, THAT NO ONE COULD OPEN, THE PROBLEM WAS THIS  
03:45PM 6 ENCRYPTION KEY THAT WAS MISSING, THAT WITHOUT THE ENCRYPTION  
03:45PM 7 KEY YOU COULDN'T OPEN THE HARD DRIVE, AND NOBODY HAD THE  
03:45PM 8 ENCRYPTION KEY.

03:45PM 9 AND WHAT MR. SONNIER TESTIFIED ABOUT WAS, WOULD YOU NEED  
03:45PM 10 THE ENCRYPTION KEY? AND HIS TESTIMONY WAS THAT IF YOU GOT THE  
03:45PM 11 ORIGINAL SERVERS, YOU WOULD NOT NEED THE ENCRYPTION KEY?

03:45PM 12 YOU WOULD TO OPEN THE COPY THAT NO ONE COULD OPEN, BUT IF  
03:45PM 13 YOU HAD GOTTEN THE SERVERS, YOU DIDN'T NEED THE ENCRYPTION KEY.  
03:46PM 14 THAT WAS THE TESTIMONY, AND IT IS NOT REBUTTED BY ANYTHING THE  
03:46PM 15 GOVERNMENT PUT ON. BUT THAT'S WHAT HE'S TALKING ABOUT HERE.

03:46PM 16 WOULD THE MISSING PASSWORD OR ENCRYPTION KEY AFFECT HIS  
03:46PM 17 ABILITY TO RECOVER THE DATA?

03:46PM 18 HE SAYS NO.

03:46PM 19 QUESTION: HOW CAN YOU THEN BE CONFIDENT THAT THERE'S NO  
03:46PM 20 OTHER SOFTWARE OR ENCRYPTION THAT WOULD PREVENT OUR ABILITY TO  
03:46PM 21 ACCESS THIS DATA?

03:46PM 22 AND HE SAYS BECAUSE WE'RE USING A STANDARD MICROSOFT SQL  
03:46PM 23 SERVER THERE'S REALLY -- AND A PARTICULAR FEATURE OF THAT  
03:46PM 24 STANDARD SOFTWARE, THERE'S REALLY ONLY ONE WAY THAT THAT  
03:46PM 25 STANDARD FEATURE CAN WORK.

03:46PM 1 AND WHAT IS THE RELATIONSHIP, IF ANY, BETWEEN THAT KIND OF  
03:46PM 2 CUSTOMIZATION ON THE ONE HAND AND THE RECOVERABILITY OF THE  
03:46PM 3 UNDERLYING DATA ON THE OTHER?

03:46PM 4 MR. SONNIER SAID IT HAD NOTHING TO DO WITH EACH OTHER.

03:46PM 5 AND WHAT WAS GOING ON HERE WAS THE GOVERNMENT WAS  
03:46PM 6 SUGGESTING ON CROSS THAT MAYBE BECAUSE THE DATABASE WAS  
03:46PM 7 CUSTOMIZED FOR A COMPANY LIKE THERANOS, THAT THAT WOULD MAKE IT  
03:47PM 8 SOMEHOW DIFFERENT WHERE YOU COULDN'T RECOVER THE LIS IF YOU GOT  
03:47PM 9 THE SERVERS.

03:47PM 10 MR. SONNIER TESTIFIED THAT ALL COMPANIES HAVE TO CUSTOMIZE  
03:47PM 11 THE MICROSOFT SQL SERVER PRODUCT TO SOME EXTENT TO RUN THEIR  
03:47PM 12 DATA FOR THEIR BUSINESS, WHATEVER THEIR BUSINESS HAPPENS TO BE.

03:47PM 13 AND THAT HE TESTIFIED REPEATEDLY THAT THAT DOES NOT AFFECT  
03:47PM 14 IN ANY WAY THE ABILITY TO RECOVER THE DATA IF YOU HAVE THE  
03:47PM 15 SERVERS AND THE HARD DRIVES.

03:47PM 16 IF WE GO TO THE NEXT.

03:47PM 17 SO THEN THERE WAS A QUESTION ABOUT, WELL, WHAT HAPPENED TO  
03:47PM 18 THE SERVERS AND THE HARD DRIVES?

03:47PM 19 AND THE BASIS OF MR. SONNIER'S OPINION FROM THE MATERIAL  
03:47PM 20 THAT HE REVIEWED WAS THAT AFTER THE LIS WAS DISASSEMBLED AT  
03:47PM 21 THERANOS AT THE END OF AUGUST OF 2018, THE HARD DRIVES WERE  
03:47PM 22 SENT TO ONE STORAGE LOCATION AND THE EQUIPMENT WENT TO A  
03:47PM 23 DIFFERENT STORAGE LOCATION.

03:47PM 24 GO TO THE NEXT SLIDE.

03:47PM 25 AND THEN THE QUESTION PUT TO HIM ON CROSS, WHAT IS YOUR

1 UNDERSTANDING, IF YOU HAVE ONE, AS TO THE CURRENT LOCATION OF  
2 THE ORIGINAL HARD DRIVES CONTAINING THE THERANOS LIS?

3 AND MR. SONNIER TESTIFIED, AGAIN FROM THE MATERIAL THAT HE  
4 REVIEWED, NOTHING THAT I HAVE SEEN SAYS THAT THEY'RE ANYWHERE  
5 OTHER THAN THE STORAGE LOCKERS THAT THEY WERE ORIGINALLY PLACED  
6 INTO AFTER DISASSEMBLY.

7 LET'S GO TO THE NEXT SLIDE.

8 THIS SERIES OF QUESTIONS IS IMPORTANT BECAUSE THERE'S NO  
9 EVIDENCE THAT ANYBODY FROM THE GOVERNMENT EVER TRIED TO RECOVER  
10 THOSE ITEMS FROM THE STORAGE LOCATIONS, NO FEDERAL AGENT, NO  
11 PROSECUTOR, NO ONE FROM THE GOVERNMENT. IN THE MATERIALS THAT  
12 MR. SONNIER REVIEWED, THERE'S NO EVIDENCE THAT HE HAD FOR HIM  
13 THAT ANYONE FROM THE GOVERNMENT EVER TRIED TO GET THOSE SERVERS  
14 OR THE HARD DRIVES.

15 AND THE GOVERNMENT PRESENTED NO SUCH EVIDENCE EITHER. AND  
16 YOU WOULD THINK THAT IF THEY HAD TRIED, THEY WOULD HAVE  
17 PRESENTED IT, AND THEY DID NOT.

18 JUST A WORD ABOUT MR. SONNIER. THIS IS THE INSTRUCTION  
19 THAT JUDGE DAVILA WILL GIVE YOU. "YOU HAVE HEARD TESTIMONY  
20 FROM RICHARD SONNIER WHO TESTIFIED TO HIS OPINIONS AND THE  
21 REASONS FOR HIS OPINIONS. THIS OPINION TESTIMONY IS ALLOWED  
22 BECAUSE OF THE EDUCATION OR EXPERIENCE OF THIS WITNESS."

23 SO HE WAS QUALIFIED AS AN EXPERT WITNESS ON MICROSOFT SQL  
24 SERVER DATA RECOVERY AND DATA ENCRYPTION, AND THAT'S THE  
25 OPINION THAT HE'S ENTITLED TO GIVE AND YOU'RE ENTITLED TO RELY

03:49PM 1 ON AT THIS TRIAL.

03:49PM 2 OKAY. LET'S JUST SORT OF COMPARE RICHARD SONNIER TO THESE  
03:49PM 3 UNKNOWN PEOPLE THAT THE GOVERNMENT TALKED ABOUT.

03:49PM 4 SO RICHARD SONNIER IS AN EXPERT, AS I SAID, IN SQL DATA  
03:49PM 5 RECOVERY AND DATA ENCRYPTION. HE HAS OVER 35 YEARS OF  
03:49PM 6 EXPERIENCE. HE HAS USED MICROSOFT SQL SERVER DAILY FOR THE  
03:49PM 7 LAST 20 YEARS.

03:49PM 8 THE GOVERNMENT DIDN'T CALL THESE PEOPLE ON THE RIGHT, BUT  
03:50PM 9 THEY DID REFERENCE THEM IN THE CROSS-EXAMINATION THEY DID OF  
03:50PM 10 MR. SONNIER.

03:50PM 11 ONE OF THE PEOPLE THEY REFERENCED WAS DAVID TAYLOR, WHO  
03:50PM 12 WAS IDENTIFIED AS A THERANOS CEO IN 2018. TECHNICAL SKILLS  
03:50PM 13 UNKNOWN. WE HAVE NO INFORMATION ABOUT DAVID TAYLOR, WHATEVER  
03:50PM 14 HE SAID ABOUT MICROSOFT SQL SERVER OR THE ABILITY TO RECOVER  
03:50PM 15 IT, WE DON'T KNOW WHETHER HE HAD ANY BASIS OR ANY KNOWLEDGE OR  
03:50PM 16 WHETHER HE HAS A TECHNICAL SKILLS.

03:50PM 17 MICHAEL CHUNG WAS ANOTHER PERSON THAT THE GOVERNMENT  
03:50PM 18 IDENTIFIED WHO THEY DID NOT CALL. AS FAR AS MR. SONNIER KNEW  
03:50PM 19 FROM THE MATERIALS THAT HE LOOKED AT, HE WAS AN I.T. EQUIPMENT  
03:50PM 20 MOVER WHO WAS TASKED WITH MOVING THE EQUIPMENT. AGAIN, HIS  
03:50PM 21 TECHNICAL SKILLS ARE UNKNOWN. THERE'S NO INFORMATION ABOUT  
03:50PM 22 WHAT HE KNOWS AND WHAT HE HAS TO BRING TO BEAR ON THE QUESTION  
03:50PM 23 OF RECOVERY OF LIS.

03:50PM 24 ANOTHER PERSON REFERENCED WAS STEPHEN O'NEILL, A LAWYER AT  
03:50PM 25 DORSEY. IT'S A LAW FIRM. AGAIN, TECHNICAL SKILLS UNKNOWN. IN



03:51PM 1 ANY EVENT, HE'S A LAWYER.

03:51PM 2 UNKNOWN I.T. PERSON. THERE WAS A PERSON WHO WASN'T NAMED  
03:51PM 3 IN THE CROSS-EXAMINATION WHO HAD SOME KIND OF VIEW ABOUT HOW  
03:51PM 4 HARD OR EASY IT WOULD BE TO RECOVER LIS, AND WE DON'T KNOW WHO  
03:51PM 5 THAT PERSON IS OR WHAT THE PERSON'S TECHNICAL SKILLS ARE.

03:51PM 6 SO THAT'S WHAT WE HAVE FROM THE GOVERNMENT STACKED UP  
03:51PM 7 AGAINST MR. SONNIER.

03:51PM 8 AND IF YOU THINK THEY HAD A REBUTTAL TO MR. SONNIER, THAT  
03:51PM 9 HE WAS WRONG AND YOU COULDN'T RECOVER THIS AND GETTING THE  
03:51PM 10 SERVERS WOULDN'T WORK, YOU WOULD THINK THEY WOULD HAVE  
03:51PM 11 PRESENTED THAT BECAUSE IT'S IMPORTANT. AND THEY DIDN'T, AND  
03:51PM 12 THERE ISN'T.

03:51PM 13 AND WHAT HAS HAPPENED HERE IS THAT THE GOVERNMENT HAS  
03:51PM 14 BROUGHT A SCIENTIFIC FRAUD CASE, IS TRYING TO CONVICT  
03:51PM 15 MR. BALWANI OF WIRE FRAUD CRIMES, CONSPIRACY, WHERE HE'S  
03:51PM 16 SUPPOSEDLY GIVING OUT INACCURATE TESTING ON A WIDESPREAD BASIS,  
03:51PM 17 HE'S SUPPOSED TELLING INVESTORS THAT THE TECHNOLOGY WORKS WHEN  
03:51PM 18 IT DOESN'T, AND WE DON'T HAVE ANY SCIENTIFIC PROOF, CERTAINLY  
03:52PM 19 NOT BEYOND A REASONABLE DOUBT, THAT THAT'S THE CASE.

03:52PM 20 AND THE DEFENSE WANTED LIS. WE TRIED TO GET IT, WE  
03:52PM 21 COULDN'T GET IT. THE GOVERNMENT DIDN'T GET THE SERVERS. AND  
03:52PM 22 THAT'S WHERE THE FAULT LIES, AND THAT'S WHY WE DON'T HAVE THIS  
03:52PM 23 EVIDENCE.

03:52PM 24 AND LET'S GO TO THE NEXT SLIDE.

03:52PM 25 IT'S IMPOSSIBLE TO ASSESS LAB ERRORS WITHOUT LIS. AND I

03:52PM 1 TALKED ABOUT THE IMPORTANCE IN THE INVESTOR CASE AS WELL.

03:52PM 2 AS YOU KNOW FROM DR. ROSENDORFF, ALL LABS MAKE ERRORS. HE  
03:52PM 3 REFERENCES THE UNIVERSITY OF PITTSBURGH IN HIS TESTIMONY, AND  
03:52PM 4 AS WE SAW, HE TOLD A PHYSICIAN, DR. CHEN, IN AN EMAIL THAT  
03:52PM 5 THERE WERE NO MORE INQUIRIES TO THERANOS COMPARED TO WHAT HE  
03:52PM 6 EXPERIENCED AT THE UNIVERSITY OF PITTSBURGH.

03:52PM 7 DR. BURNES, WE SAW THIS JUST A FEW MINUTES AGO, HE HAD  
03:52PM 8 FOUR ERRORS IN ONE WEEK FROM LABCORP. SO LABORATORIES MAKE  
03:52PM 9 ERRORS.

03:52PM 10 DR. WOOTEN, WHO THE DEFENSE CALLED, SHE KNOWS THERE'S  
03:53PM 11 MISTAKES THAT OCCUR AT VARIOUS LABS.

03:53PM 12 I WANT TO SAY ONE OTHER -- WELL, I'LL DO THAT A LITTLE  
03:53PM 13 LATER.

03:53PM 14 SO FAR LET'S TALK ABOUT ANOTHER THING THAT THE GOVERNMENT  
03:53PM 15 PRESENTED, THE SO-CALLED FOSQUE SPREADSHEET. THIS IS THE  
03:53PM 16 SPREADSHEET FROM SEPTEMBER OF 2015. I SHOWED YOU ONE ENTRY  
03:53PM 17 FROM IT BEFORE, THAT WAS DR. ZACHMAN'S ENTRY. BUT IT'S  
03:53PM 18 BASICALLY CUSTOMER SERVICE INQUIRIES AND COMPLAINTS. AND THE  
03:53PM 19 GOVERNMENT PRESENTED THAT AND FROM TIME TO TIME DURING TRIAL  
03:53PM 20 WOULD READ FROM IT.

03:53PM 21 THESE WERE SORT OF A MIX OF THINGS. SOME INFORMATION ON  
03:53PM 22 THERE YOU COULD DISCERN WHAT HAPPENED AND SOMETIMES YOU  
03:53PM 23 COULDN'T, SOMETIMES THERE WAS INQUIRY, SOMETIMES YOU COULD SEE  
03:53PM 24 WHAT THE RESOLUTION WAS. AND IT'S ABOUT 230 OR SO ENTRIES ON  
03:53PM 25 THERE.

03:53PM 1 I JUST WANT TO TALK ABOUT WHY THAT SPREADSHEET IS NOT A  
03:53PM 2 SUBSTITUTE FOR LIS AND REALLY IS NOT THAT HELPFUL.

03:53PM 3 SO LET'S TALK ABOUT DR. BURNES'S ENTRY. THIS WAS  
03:54PM 4 DR. ELLSWORTH'S DOCTOR.

03:54PM 5 SO IN THAT SPREADSHEET, THIS IS EXHIBIT 4520, DR. BURNES  
03:54PM 6 HAS HIS INQUIRY ABOUT THE PSA BEING HIGH ON MAY 14TH, AND THEN  
03:54PM 7 NORMAL ON MAY 18TH, AND HE DOESN'T THINK THOSE THINGS ARE  
03:54PM 8 RIGHT.

03:54PM 9 AND THEN IT SAYS ON THE RIGHT, THE LAB RERAN THE SAMPLE  
03:54PM 10 AND DANIEL REACHED OUT TO THE PHYSICIAN.

03:54PM 11 SO THAT'S ALL THE NOTE SAYS.

03:54PM 12 WELL, THINK ABOUT WHAT WOULD HAPPEN IF THAT'S THE ONLY  
03:54PM 13 THING WE HAD?

03:54PM 14 NOW, IT JUST SO HAPPENED THAT DR. BURNES WAS ONE OF THE  
03:54PM 15 TWO PHYSICIANS THAT THE GOVERNMENT CALLED IN THIS CASE. FOUR  
03:54PM 16 PATIENTS, TWO PHYSICIANS.

03:54PM 17 DR. BURNES HAPPENED TO BE ONE OF THOSE, RIGHT? AND WE  
03:54PM 18 LEARNED A LOT FROM DR. BURNES WHEN HE TESTIFIED.

03:54PM 19 IF YOU WOULD GO TO THE NEXT SLIDE.

03:54PM 20 WE LEARNED THAT HE HAD BEEN USING THERANOS FOR A YEAR AND  
03:54PM 21 HE COULDN'T FIND ANY OTHER PROBLEMS. SO WE KNOW THAT ABOUT  
03:54PM 22 DR. BURNES ONLY BECAUSE THE GOVERNMENT CALLED HIM. BUT ALL OF  
03:54PM 23 THE OTHER ISSUES, WE DON'T HAVE THE BENEFIT OF THAT  
03:55PM 24 INFORMATION. WE DON'T KNOW WHAT WAS GOING ON BECAUSE THESE  
03:55PM 25 PATIENTS AND DOCTORS WEREN'T CALLED.

03:55PM 1 SO THAT SPREADSHEET IS NOT THE SAME AS THE LIS. AND IT  
03:55PM 2 HAS SOME INFORMATION ON IT, BUT IN ORDER TO PROVE THIS CASE,  
03:55PM 3 YOU NEED THE LABORATORY INFORMATION SYSTEM.

03:55PM 4 BUT I WANT TO ILLUSTRATE THIS A LITTLE MORE WITH  
03:55PM 5 DR. WOOTEN AGAIN. SO DR. WOOTEN IS A NATUROPATHIC PHYSICIAN.  
03:55PM 6 AND HER TREATMENT PHILOSOPHY IS TO DO A LOT BLOOD TESTS TO  
03:55PM 7 CONTINUALLY MONITOR A PATIENT'S HEALTH. SO SHE WAS IN A GOOD  
03:55PM 8 POSITION TO SEE WHAT WAS GOING ON.

03:55PM 9 AND THE QUESTION PUT TO HER WAS WHY WERE YOU COMFORTABLE  
03:55PM 10 SENDING YOUR PATIENTS TO THERANOS ALL OF THAT TIME? AND THAT  
03:55PM 11 GOES FROM 2014 TO 2016.

03:55PM 12 SHE SAYS DURING THE WHOLE TIME I SENT THEM?

03:55PM 13 YEAH. WHY WERE YOU COMFORTABLE.

03:55PM 14 AND HER ANSWER IS BECAUSE I REVIEWED THE LABS. I TEST  
03:55PM 15 QUITE OFTEN. I DO A COMPARISON WITH OTHER LABS AND THE RESULTS  
03:56PM 16 I WAS GETTING FOR MY PATIENTS -- WHAT IS THE WORD I'M LOOKING  
03:56PM 17 FOR? -- THEY WERE CONSISTENT WITH OTHER LABS AS WELL.

03:56PM 18 AND HOW ABOUT HOW MANY PATIENTS WAS THAT?

03:56PM 19 OVER 150.

03:56PM 20 SO SHE HAS 150 PATIENTS APPROXIMATELY, OVER 150. SHE IS  
03:56PM 21 TESTING THEM A LOT AND SHE DIDN'T SEE ANY ISSUES. SHE SAW THAT  
03:56PM 22 THEY WERE CONSISTENT.

03:56PM 23 SO THOSE WERE MORE TESTS WE'D HAVE IF WE HAD ACCESS TO  
03:56PM 24 LIS.

03:56PM 25 OKAY. WE'RE NOW DOWN TO THE LAST TOPIC IN THE ROAD MAP,

03:56PM 1 AND I'M SURE EVERYONE IS HAPPY ABOUT THAT, MOST OF ALL ME.

03:56PM 2 SO LET'S TALK ABOUT WHAT YOUR DECISION IS. IT'S OBVIOUSLY  
03:56PM 3 REALLY IMPORTANT. IT'S IMPORTANT TO THE PUBLIC. IT'S  
03:57PM 4 IMPORTANT TO MR. BALWANI OF ALL PEOPLE.

03:57PM 5 SO FIRST OF ALL, AFTER MY CLOSING REMARKS AND THE  
03:57PM 6 GOVERNMENT HAS A CHANCE TO TALK TO YOU ON REBUTTAL,  
03:57PM 7 JUDGE DAVILA WILL INSTRUCT YOU ON THE LAW OF THIS CASE THAT YOU  
03:57PM 8 SHOULD APPLY. YOU WILL GET A COPY OF THE JURY INSTRUCTIONS.

03:57PM 9 YOU WON'T GET A COPY OF MY SLIDES AND YOU WON'T GET THE  
03:57PM 10 TRANSCRIPT. YOU WILL HAVE THE EXHIBITS TO WORK WITH.

03:57PM 11 AND THEN IF WE GO TO THE NEXT PAGE.

03:57PM 12 SO OBVIOUSLY THERE WILL BE A NEED TO ELECT A FOREPERSON,  
03:57PM 13 AND YOU'LL DELIBERATE AND DISCUSS THE CASE. THAT WILL BE THE  
03:57PM 14 TIME WHEN YOU CAN DISCUSS THE CASE WHEN YOU'RE DELIBERATING.  
03:57PM 15 YOU HAVE NOT BEEN ABLE TO DO THAT UP TO THIS POINT.

03:57PM 16 AND THE VERDICT, WHETHER GUILTY OR NOT GUILTY, MUST BE  
03:57PM 17 UNANIMOUS. SO YOU HAVE TO REACH UNANIMOUS AGREEMENT WHETHER  
03:57PM 18 IT'S GUILTY OR NOT GUILTY ON EVERY ELEMENT OF EVERY OFFENSE IN  
03:57PM 19 ORDER TO RETURN A VERDICT ON ANY OF THE COUNTS -- ON EACH OF  
03:57PM 20 THE COUNTS.

03:57PM 21 AND THIS IS GOING TO BE -- IF YOU GO TO THE NEXT PAGE.

03:57PM 22 THIS IS GOING TO BE YOUR PREROGATIVE, NOT MINE, BUT  
03:58PM 23 YOU'RE GOING TO GET A VERDICT FORM THAT AFTER YOU DELIBERATE  
03:58PM 24 AND YOU MAKE A DECISION, IF YOU'RE ABLE TO REACH ONE, YOU WILL  
03:58PM 25 HAVE TO FILL IN THIS CHART.

03:58PM 1 AND THE FACT THAT GUILTY IS LISTED FIRST IN ALL OF THESE  
03:58PM 2 BOXES, THAT DOESN'T MATTER. MR. BALWANI IS PRESUMED INNOCENT  
03:58PM 3 UNTIL PROVEN BEYOND A REASONABLE DOUBT OTHERWISE. AND SO EACH  
03:58PM 4 OF THESE YOU'LL HAVE TO FILL IN, OR THE FOREPERSON WILL  
03:58PM 5 PROBABLY FILL IN.

03:58PM 6 WHAT WE'RE SUGGESTING OBVIOUSLY FROM THE DEFENSE  
03:58PM 7 STANDPOINT IS THAT ALL OF THOSE SHOULD BE FILLED IN WITH NOT  
03:58PM 8 GUILTIES, AND THAT'S YOUR PREROGATIVE, BUT OBVIOUSLY THAT'S  
03:58PM 9 WHAT WE'RE ASKING YOU TO DO.

03:58PM 10 LET'S GO TO THE NEXT PAGE.

03:58PM 11 AND THERE ARE GOING TO BE 12 OF THOSE BECAUSE THERE ARE 12  
03:58PM 12 COUNTS.

03:58PM 13 OKAY. THE GOVERNMENT HAS THE BURDEN OF PROOF HERE. THEY  
03:58PM 14 HAVE THE BURDEN TO PROVE THAT MR. BALWANI IS GUILTY ON EVERY  
03:59PM 15 SINGLE ELEMENT OF EVERY COUNT BEYOND A REASONABLE DOUBT. IF  
03:59PM 16 YOU DON'T THINK THAT EVERY ELEMENT OF EVERY COUNT IS MET FOR  
03:59PM 17 EACH OF THE COUNTS, YOU DON'T THINK THAT, YOU HAVE TO RETURN A  
03:59PM 18 VERDICT OF NOT GUILTY.

03:59PM 19 MR. BALWANI DOES NOT HAVE TO PUT ON A CASE AS I'VE TOLD  
03:59PM 20 YOU. HE DOESN'T HAVE TO TESTIFY.

03:59PM 21 WE COULD HAVE SAT THERE THE WHOLE TIME AND DONE NOTHING.  
03:59PM 22 BUT AS I SAID AT THE BEGINNING OF MY OPENING REMARKS A COUPLE  
03:59PM 23 DAYS AGO, THANK GOODNESS WE DID BECAUSE WITHOUT THAT, YOU WOULD  
03:59PM 24 NOT HAVE ALL OF THE INFORMATION THAT YOU HAVE THAT THE DEFENSE  
03:59PM 25 HAD TO TELL YOU.

1 NOW, THE GOVERNMENT HAS TO PROVE, AMONG OTHER THINGS, THAT  
2 MR. BALWANI HAD ACTUAL KNOWLEDGE IN ORDER TO BE GUILTY OF THE  
3 OFFENSES, NOT THAT HE SHOULD HAVE KNOWN OR HE WAS NEGLIGENT OR  
4 HE SHOULD HAVE HAD A DIFFERENT JUDGMENT. HE HAS TO HAVE ACTUAL  
5 KNOWLEDGE BEYOND A REASONABLE DOUBT.

6 YOU WOULD HAVE TO FIND BEYOND A REASONABLE DOUBT THAT THEY  
7 INTENDED TO DEFRAUD PATIENTS AND INTENDED TO DEFRAUD INVESTORS  
8 IN ORDER TO BE GUILTY OF THE COUNTS HE'S CHARGED WITH.

9 NOW, FROM THE GOVERNMENT'S STANDPOINT, THEY'VE PRESENTED  
10 AN UNFAIR AND COMPLETELY INCOMPLETE -- COMPLETELY INCOMPLETE  
11 PICTURE.

12 FIRST OF ALL, AS I SAID SEVERAL TIMES DURING MY CLOSING  
13 REMARKS, THERE'S NO TAPE FOR MR. TOLBERT, WHO RECORDED A  
14 CONVERSATION WITH INVESTORS. THAT WOULD HAVE BEEN OUR CHANCE  
15 TO HEAR THE TRUTH, THE ACTUAL WORDS.

16 THE GOVERNMENT ACTED LIKE THEY WERE SURPRISED WHEN  
17 MR. TOLBERT SAID THAT HE PRODUCED IT TO THE GOVERNMENT,  
18 MR. TOLBERT DISCUSSED THAT TAPE WITH THE GOVERNMENT. WE DIDN'T  
19 HEAR IT. RIGHT THERE, REASONABLE DOUBT. WHY AREN'T THEY  
20 PLAYING YOU THE WORDS THAT MS. HOLMES ACTUALLY SPOKE TO  
21 INVESTORS IF HER WORDS PROVE MISREPRESENTATIONS AND FRAUD? WHY  
22 DIDN'T THEY PLAY IT?

23 I JUST TALKED ABOUT A FEW MINUTES AGO ABOUT THE LABORATORY  
24 INFORMATION SYSTEM. THEY CALLED FOUR PATIENTS OUT OF A MILLION  
25 PLUS LABORATORY RESULTS, AND THEY'RE TRYING TO SAY THAT THIS IS

04:01PM 1 PROOF OF THE LABORATORY BEING BAD ON A WIDESPREAD BASIS AND  
04:01PM 2 THAT SOMEHOW MR. BALWANI KNOWS THAT.

04:01PM 3 THEY DIDN'T HAVE THREE OUT OF FOUR OF MR. BINGHAM'S  
04:01PM 4 REPORTS, AND WE ARE RELYING IN A CRIMINAL CASE OF THIS  
04:01PM 5 MAGNITUDE ON MR. BINGHAM'S -- HOW HE FELT ON PARTICULAR DAYS.

04:01PM 6 THE GOVERNMENT DIDN'T TELL YOU THAT TWO OUT OF THE FOUR  
04:01PM 7 PATIENTS THAT YOU HEARD FROM HAD THEIR TESTS ON COMMERCIAL  
04:01PM 8 DEVICES. THEY ARE JUST TRYING TO BLOW STUFF BY HERE WITHOUT  
04:01PM 9 THE GOING THROUGH FACTS. WE HAD TO TELL YOU WHAT WAS REALLY  
04:01PM 10 GOING ON WITH THE DEVICES THEY WERE BEING TESTED ON.

04:01PM 11 WHERE WAS DANIEL YOUNG? HE WAS ON 78 EMAILS. HE HAD HIS  
04:01PM 12 HANDS ON EVERYTHING. HE WAS THE PERSON WHO DID THE STUDIES AND  
04:01PM 13 WHO TRIED TO FIX ANY PROBLEMS THAT DEVELOPED IN THE LAB, WHO  
04:01PM 14 MR. BALWANI OBVIOUSLY FROM THE EMAIL RECORD HERE RELIED ON.

04:01PM 15 WHY ISN'T HE HERE? WHY DIDN'T THE GOVERNMENT CALL HIM  
04:01PM 16 AND TELL YOU WHAT HE THOUGHT? HE WAS AT THERANOS FOR A VERY  
04:02PM 17 LONG TIME.

04:02PM 18 WHY DIDN'T THE GOVERNMENT SHOW YOU THE CENTER FOR DISEASE  
04:02PM 19 CONTROL GUIDANCE WITH MS. TOMPKINS WHEN THEY WERE TRYING TO  
04:02PM 20 CLAIM THAT SHE GOT INACCURATE TESTS? WOULDN'T IT BE IMPORTANT  
04:02PM 21 TO LET YOU KNOW, WHICH WE DID, THAT THERANOS FOLLOWED THAT CDC  
04:02PM 22 GUIDANCE TO THE LETTER?

04:02PM 23 WHERE'S LANGLEY GEE, THE QUALITY CONTROL MANAGER?

04:02PM 24 YOU HEARD A LOT ABOUT QUALITY CONTROL. THAT WAS THE  
04:02PM 25 PERSON IN CHARGE OF QUALITY CONTROL. HE WASN'T HERE. THE



04:02PM 1 GOVERNMENT DIDN'T CALL HIM BECAUSE HE MIGHT BE ABLE TO TELL YOU  
04:02PM 2 THE TRUTH.

04:02PM 3 NO OTHER KEY LEADERS IN THE SCIENTIFIC LEADERSHIP TEAM  
04:02PM 4 WERE CALLED.

04:02PM 5 DR. SAKSENA, WHO WAS SLATED TO BE THE NEXT LAB DIRECTOR AS  
04:02PM 6 EARLY AS 2014, THAT'S WHAT MR. BALWANI INTENDED, AND HE WASN'T  
04:02PM 7 CALLED EITHER.

04:02PM 8 HODA ALAMDAR THAT YOU'VE HEARD A LOT OF ABOUT;  
04:02PM 9 DR. NISHIT DOSHI, DR. CHINMAY PANGARKAR. NONE OF THESE PEOPLE  
04:02PM 10 WERE CALLED AS WITNESSES AT TRIAL TO TELL YOU WHAT WAS GOING ON  
04:03PM 11 IN THE LAB. DR. SIVARAMAN.

04:03PM 12 COMPLETELY MISLEADING PRESENTATIONS ABOUT ASSAYS LIKE HCG.  
04:03PM 13 THE GOVERNMENT WOULD HAVE HAD YOU BELIEVE THAT ROSENDORFF,  
04:03PM 14 DR. ROSENDORFF CALLED A STOP TO HCG AND HE NEVER ALLOWED IT TO  
04:03PM 15 GO BACK ON EDISON, AND IT DID ANYWAY WITHOUT HIS KNOWLEDGE.

04:03PM 16 WELL, WE HAD TO SHOW YOU THE EMAILS WHERE DR. ROSENDORFF  
04:03PM 17 ABSOLUTELY APPROVED TESTING GOING BACK ON EDISON.

04:03PM 18 THE GOVERNMENT CALLED MARK PANDORI WHO REPEATEDLY LIED ON  
04:03PM 19 THE STAND AND IS STILL TRYING TO RELY ON DR. PANDORI. YOU  
04:03PM 20 HEARD THE GOVERNMENT'S CLOSING REMARKS WHERE THEY'RE STILL  
04:03PM 21 TRYING TO RELY ON DR. PANDORI.

04:03PM 22 AS I SAID BEFORE, YOU CANNOT BELIEVE A SINGLE WORD THAT  
04:03PM 23 DR. PANDORI SAID GIVEN THAT HE DENIED WRITING HIS OWN MEMO THAT  
04:03PM 24 RECOMMENDED TO MR. BALWANI THAT THEY MAKE MORE EDISONS FOR  
04:03PM 25 PATIENT TESTING.

04:03PM 1 NO BOARD MEMBERS WERE CALLED. THEY WERE THE ULTIMATE  
04:03PM 2 AUTHORITY IN THE COMPANY. WE SAW THAT. NOT A SINGLE BOARD  
04:03PM 3 MEMBER.

04:03PM 4 WHERE IS WADE MIQUELON, THE CEO OF WALGREENS WHO INITIATED  
04:04PM 5 THE RELATIONSHIP?

04:04PM 6 MR. JHAVERI DIDN'T COME INTO THE PICTURE UNTIL 2014.

04:04PM 7 THE GOVERNMENT CLAIMS THAT WALGREENS WAS DEFRAUDED FROM  
04:04PM 8 THE VERY BEGINNING OF THE RELATIONSHIP, WHICH WENT BACK TO  
04:04PM 9 2010.

04:04PM 10 WADE MIQUELON WAS THE PERSON. WHERE IS HE IF THEY'RE  
04:04PM 11 GOING TO TRY TO PROVE THAT?

04:04PM 12 WHERE IS DR. JAY ROSAN, THE MEDICAL DOCTOR AT WALGREENS  
04:04PM 13 WHO HAD THE DEVICE TO TEXT FOR A COUPLE OF YEARS? WHERE WAS  
04:04PM 14 HE?

04:04PM 15 WHERE ARE ALL OF THE OTHER WITNESSES FROM THE  
04:04PM 16 PHARMACEUTICAL COMPANIES? WHERE IS THE GLAXOSMITHKLINE  
04:04PM 17 WITNESS?

04:04PM 18 THE DOCUMENT THAT WE SAW THAT MR. BALWANI GOT SAYS THAT  
04:04PM 19 GLAXOSMITHKLINE COMPREHENSIVELY VALIDATED THE THERANOS  
04:04PM 20 TECHNOLOGY? WHERE ARE THEY? THE GOVERNMENT DIDN'T CALL THEM  
04:04PM 21 EITHER.

04:04PM 22 WHERE IS GARY YAMAMOTO, THE PERSON AT CMS WHO ACTUALLY DID  
04:04PM 23 THE FINGERSTICK TESTING ANALYSIS DURING THAT SEPTEMBER 2015  
04:04PM 24 INSPECTION?

04:05PM 25 THEY CALLED MS. BENNETT.

04:05PM 1 WHERE IS GARY YAMAMOTO? THE GOVERNMENT DIDN'T CALL HIM,  
04:05PM 2 EITHER.

04:05PM 3 WHERE IS ROGER PARLOFF, THE JOURNALIST WHO WROTE THE  
04:05PM 4 "FORTUNE" ARTICLE? THE GOVERNMENT PUT FORWARD THE  
04:05PM 5 "FORTUNE" ARTICLE. BUT WHAT WAS MR. PARLOFF ACTUALLY TOLD BY  
04:05PM 6 ELIZABETH HOLMES? WHAT WERE HIS WORDS? WHAT WERE MS. HOLMES'S  
04:05PM 7 WORDS? HOW DID THAT WORK?

04:05PM 8 WE DIDN'T HEAR FROM MR. PARLOFF, EITHER.

04:05PM 9 WE HEARD NO WITNESSES RELATING TO THE ADVERTISING COUNT,  
04:05PM 10 COUNT TWELVE.

04:05PM 11 DID THE ADS RUN? WHEN? WHO SAW THEM? WHAT DID THE ADS  
04:05PM 12 SAY? WE HAVE NO IDERE BECAUSE THE GOVERNMENT DIDN'T BOTHER TO  
04:05PM 13 PROVE THAT.

04:05PM 14 WHERE IS CRAIG HALL? HE IS AN INVESTOR WHO INVESTOR --  
04:05PM 15 MR. TOLBERT WAS, CALLED BUT WHERE IS CRAIG HALL?

04:05PM 16 WHERE IS DAN, DOUG, RICK, AND DICK DEVOS, THE DECISION  
04:05PM 17 MAKERS AT RDV, THE DEVOS FAMILY? WOULDN'T IT BE NICE TO HEAR  
04:05PM 18 FROM THAT DECISION MAKERS FROM THAT FAMILY AS TO WHAT THEY  
04:05PM 19 REALLY THOUGHT, WHAT THEY REALLY INTENDED? WE DIDN'T HEAR FROM  
04:06PM 20 THEM, EITHER.

04:06PM 21 WE HAD TO PRESENT THE TRUTH THROUGH EMAILS AND DOCUMENTS,  
04:06PM 22 AND THAT IS WHAT IS IMPORTANT HERE. WHAT DO THE  
04:06PM 23 CONTEMPORANEOUS DOCUMENTS REALLY SHOW, NOT THE WITNESS'S  
04:06PM 24 MEMORIES FROM YEARS AND YEARS LATER.

04:06PM 25 AND THE CONTEMPORANEOUS DOCUMENTS SHOW THAT THERE'S NOT A

04:06PM 1 SINGLE TIME THAT MR. BALWANI EVER TOLD ANYBODY TO DO THE WRONG  
04:06PM 2 THING, OR TO COMMIT FRAUD, AND THERE'S NOT A SINGLE TEXT  
04:06PM 3 MESSAGE OR EMAIL WHERE HE TOLD MS. HOLMES THAT WE'RE IN A  
04:06PM 4 CONSPIRACY OR LET'S CHEAT PEOPLE OR ANYTHING OF THAT NATURE.

04:06PM 5 NOW, AT THIS POINT, AS WE ALL KNOW, WE'RE IN A FEDERAL  
04:06PM 6 CRIMINAL TRIAL. AND THERANOS IS RADIOACTIVE TO PEOPLE. IF  
04:06PM 7 THERE ARE LAB PEOPLE LIKE DR. PANDORI AND DR. ROSENDORFF, THEY  
04:06PM 8 DON'T WANT TO SAY AT THIS POINT, UNLESS THEY HAVE TO BECAUSE  
04:06PM 9 THERE'S A DOCUMENT, THEY DON'T WANT TO SAY THAT THEY APPROVED  
04:06PM 10 ANYTHING, THAT THEY AGREED TO ANYTHING AT THERANOS.

04:06PM 11 THEY WANT TO JUST SAY THAT, THEY WERE JUST SAYING THERE  
04:06PM 12 WERE PROBLEMS AND THEY WERE THE HERO. THAT'S WHAT LAB INDUSTRY  
04:07PM 13 PEOPLE WANT TO SAY NOW, NOW THAT WE'RE IN THE ENVIRONMENT THAT  
04:07PM 14 WE'RE IN.

04:07PM 15 BUSINESS PARTNERS LIKE WAG, WALGREENS, THEY WANT TO PLAY  
04:07PM 16 DOWN BEING A CHEERLEADER FOR THERANOS, THAT THEY WERE TRYING TO  
04:07PM 17 EXPAND THE PARTNERSHIP IN 2014 AND 2015. THEY WANT TO SAY, OH,  
04:07PM 18 WE WERE JUST SCALING BACK WHEN THE CONTEMPORARY DOCUMENTS TELL  
04:07PM 19 EXACTLY THE OPPOSITE STORY.

04:07PM 20 THE WEALTHY, POWERFUL INVESTORS THAT WE HEARD FROM, THEY  
04:07PM 21 WANT TO SAY WE WERE FOOLED. THEY DON'T WANT TO SAY, WELL, WE  
04:07PM 22 TOOK A FLYER ON GETTING REALLY RICH, EVEN RICHER BY LOOKING AT  
04:07PM 23 A GREAT OPPORTUNITY AND HAVE A UNICORN SITUATION WITH THERANOS  
04:07PM 24 WITH THE WALGREENS ROLLOUT.

04:07PM 25 INSTEAD, THEY WANT TO SAY, YOU KNOW, THEY WERE FOOLED.

04:07PM 1 THEY LOOK BETTER IN THE EYES OF THEIR INVESTORS, THEIR FUTURE  
04:07PM 2 INVESTORS, THEIR FAMILY OFFICES, AND THEIR EMPLOYERS.

04:07PM 3 NOW, THE GOVERNMENT IS GOING TO GET UP ON REBUTTAL. WE  
04:07PM 4 DON'T HAVE A CHANCE TO HAVE FURTHER REBUTTAL. THIS IS GOING TO  
04:07PM 5 BE THE LAST TIME THAT YOU HEAR FROM ME, BUT THE GOVERNMENT DOES  
04:07PM 6 GET TO GIVE YOU A REBUTTAL CLOSING ARGUMENT, AND THEY GET TO  
04:08PM 7 TAKE ONE MORE SHOT AT CONVINCING YOU THAT MR. BALWANI IS GUILTY  
04:08PM 8 OF SOMETHING BEYOND A REASONABLE DOUBT.

04:08PM 9 BUT WHATEVER THE GOVERNMENT SAYS IN THEIR REBUTTAL  
04:08PM 10 CLOSING, WHAT THEY CAN'T CHANGE IS THE BLACK AND WHITE  
04:08PM 11 TESTIMONY AND DOCUMENTS THAT WE, THE DEFENSE, SHARED WITH YOU;

04:08PM 12 THEY CAN'T CHANGE THE EMAIL WHERE MR. JHAVERI PROJECTS  
04:08PM 13 2500 STORES IN MARCH OF 2015 IN AN INTERNAL EMAIL WITH  
04:08PM 14 WALGREENS;

04:08PM 15 THEY CAN'T CHANGE THE FACT THAT MR. JHAVERI AT WALGREENS  
04:08PM 16 TOLD SUNNY BALWANI THAT THEY WOULD TOUCH 2,000 STORES. HE SENT  
04:08PM 17 THAT EMAIL IN AUGUST OF 2014. THEY CAN'T CHANGE THAT.

04:08PM 18 THEY CAN'T CHANGE THE PARTNERSHIP MEETING MINUTES,  
04:08PM 19 EXHIBIT 1884, FROM AUGUST 6TH, 2014, SHOWING THE INTENTION OF  
04:08PM 20 WALGREENS TO EXPAND THE ROLLOUT, NOT TO CONTRACT IT;

04:08PM 21 THEY CAN'T CHANGE THE JOHNS HOPKINS REPORT WHERE  
04:08PM 22 JOHNS HOPKINS'S PHYSICIANS EVALUATED THERANOS' TECHNOLOGY AND  
04:08PM 23 STATED THAT IT HAD NO MAJOR WEAKNESSES AND ITS STRENGTH WAS  
04:08PM 24 ACCURACY;

04:09PM 25 THEY CAN'T CHANGE THE FACT THAT WALGREENS HAD THE DEVICE

TO TEST THEMSELVES;

THEY CAN'T CHANGE THE FACT THAT MR. BALWANI WAS INFORMED BY AN EMAIL FROM IT DR. IAN GIBBONS THAT HE HAD MADE A MAJOR BREAKTHROUGH AND DEMONSTRATED THE ABILITY TO DO SUPERIOR ASSAYS ACROSS ALL FOUR BLOOD TESTING CATEGORIES;

THEY CAN'T CHANGE THE FACT THAT THERANOS DEVELOPED HUNDREDS OF ASSAYS FOR SMALL BLOOD SAMPLES;

THEY CAN'T CHANGE THE FACT THAT THE ARMY BURN STUDY USED THE THERANOS DEVICES FOR YEARS AND CAME UP WITH A PEER REVIEWED PAPER BASED ON USING THE THERANOS TECHNOLOGY;

THEY CAN'T CHANGE THE FACT THAT MS. HOLMES SENT GLAXOSMITHKLINE A REPORT SHOWING THAT GLAXOSMITHKLINE COMPREHENSIVELY VALIDATED THERANOS'S TECHNOLOGY;

THEY CAN'T CHANGE THE FACT THAT CHANNING ROBERTSON TOLD INVESTORS THAT THE TECHNOLOGY WORKS;

THEY CAN'T CHANGE THE FACT THAT DESPITE THE GOVERNMENT'S CLAIMS, DR. ROSENDORFF GOT THE TIME HE NEEDED BEFORE THE WALGREENS LAUNCH AND THAT THE LAUNCH STARTED WITH TWO ASSAYS. NO ONE WAS PRESSURING DR. ROSENDORFF TO DO ANYTHING HE WASN'T READY TO DO.

THEY CAN'T CHANGE THE FACT THAT THERANOS GOT THAT FDA CLEARANCE ON ITS SYSTEM FOR THAT ASSAY HSV-1 ON ITS SYSTEM WITH A NANOTAINER. THEY APPLIED FOR THAT APPROVAL WITH THE FDA IN NOVEMBER OF 2014.

THEY CAN'T CHANGE THE FACT THAT THERANOS FILED A PATENT

04:10PM 1 APPLICATION FOR ITS MODIFIED PREDICATE DEVICES THAT  
04:10PM 2 MS. PETERSON, RDV, HAD IN THEIR MATERIALS A REFERENCE TO, THEY  
04:10PM 3 CAN'T CHANGE THE FACT THAT THAT APPLICATION WAS FILED OR  
04:10PM 4 INFORMING THE FDA ABOUT MODIFIED PREDICATES IN COMMERCIAL  
04:10PM 5 DEVICES, DIRECTLY INFORMING THE FEDERAL GOVERNMENT.

04:10PM 6 THEY CAN'T CHANGE THE EXISTENCE OF THE PANDORI TRANSITION  
04:10PM 7 MEMO WHERE HE SAYS TO MAKE MORE EDISONS OR THE OTHER TWO EMAILS  
04:11PM 8 THAT DR. PANDORI SENT AFTER HE SUPPOSEDLY QUIT WHERE HE SAID  
04:11PM 9 MAKE MORE EDISONS BECAUSE WE'RE GOING TO NEED THEM FOR PATIENT  
04:11PM 10 TESTING.

04:11PM 11 DR. ROSENDORFF VALIDATING 57 ASSAYS ON EDISONS AND  
04:11PM 12 MODIFIED PREDICATES OVER THE COURSE OF A YEAR;

04:11PM 13 DR. ROSENDORFF'S APPROVAL OF RESUMED TESTING FOR HCG ON  
04:11PM 14 EDISONS;

04:11PM 15 THAT DR. SAKSENA INFORMED MR. BALWANI THAT HE WAS APPLYING  
04:11PM 16 TO BE A LAB DIRECTOR, AND IT WAS TAKING LONGER THAN HE WAS  
04:11PM 17 HOPING. AND MR. BALWANI'S INTENT OBVIOUSLY BEING TO PUT A  
04:11PM 18 PERMANENT LAB DIRECTOR IN PLACE SOONER RATHER THAN LATER.

04:11PM 19 DANIEL YOUNG, WHO IS THE LAB DIRECTOR IN ARIZONA, AND THE  
04:11PM 20 FACT THAT HE WAS AVAILABLE TO SPEAK TO PEOPLE LIKE DR. BURNES  
04:11PM 21 WHEN THERE WAS AN INQUIRY, THE GOVERNMENT WOULD HAVE YOU  
04:11PM 22 BELIEVE THAT THERE WAS NO ONE HOME AT THE LAB WHEN WE KNOW THAT  
04:11PM 23 DR. BURNES HAD NO TROUBLE GETTING THROUGH TO DR. YOUNG.

04:11PM 24 SOUTHWEST CONTEMPORARY WOMEN'S CLINIC, THOUSANDS OF  
04:12PM 25 PATIENT'S TESTS AT THERANOS AFTER THE EXPERIENCE WITH

04:12PM 1 MS. GOULD;

04:12PM 2 THAT THE CMS INSPECTION REPORT HAD THIS IMMEDIATE JEOPARDY  
04:12PM 3 FINDING, AND THAT WAS BASED ON AN ASSAY CALLED PT INR, RUN ON A  
04:12PM 4 COMMERCIAL DEVICE. IT HAD TO DO WITH REAGENT EXPIRATION IN TWO  
04:12PM 5 DAYS RATHER THAN FIVE DAYS OR TEN DAYS AND THIS COMPLICATED  
04:12PM 6 CALCULATION THAT MR. BALWANI KNEW NOTHING ABOUT.

04:12PM 7 THEY CAN'T CHANGE THE AAP REPORTS SHOWING THAT ASSAY AFTER  
04:12PM 8 ASSAY WAS EVALUATED OVER AND OVER AGAIN, AND MR. BALWANI AND  
04:12PM 9 CMS WERE INFORMED THAT THESE ASSAYS WERE PASSING MOST OF THE  
04:12PM 10 TIME WITH 100 PERCENT SCORES AND SOMETIMES WITH 80 PERCENT  
04:12PM 11 SCORES.

04:12PM 12 THAT THE DOD RELATIONSHIPS, THE DEPARTMENT OF DEFENSE,  
04:12PM 13 WERE REAL. THAT THEY HAD DEEP RELATIONSHIPS WITH DOD AND THEY  
04:12PM 14 WERE ACTUALLY TESTING AN EDISON DEVICE IN AFRICA FLYING ON A  
04:12PM 15 NONFIXED WING AIRCRAFT FLYING UNDER 10,000 FEET AT TEMPERATURES  
04:13PM 16 OVER 100 DEGREES, AND THERE WAS LIEUTENANT GIVENS WHO WAS  
04:13PM 17 REPORTING ON HER SUCCESSFUL EXPERIENCE WITH THAT. YOU CAN'T  
04:13PM 18 CHANGE THAT.

04:13PM 19 THEY CAN'T CHANGE THAT BOARD MEMBER SAM NUNN HAD THE  
04:13PM 20 FINANCIAL INFORMATION IN HIS POSSESSION THAT THE GOVERNMENT  
04:13PM 21 CLAIMS NOW IS FRAUDULENT;

04:13PM 22 THEY CAN'T CHANGE THE DISCLOSURE OF VENOUS DRAWS AND  
04:13PM 23 TRADITIONAL METHODS TO THE WORLD AND TO INVESTORS;

04:13PM 24 THEY CAN'T CHANGE THAT THERANOS NEVER ASKED FOR THE  
04:13PM 25 PATIENT MONEY EVEN THOUGH THEY'RE ACCUSING MR. BALWANI OF



04:13PM 1 INTENDING TO DEFRAUD PATIENTS;

04:13PM 2 THEY CAN'T CHANGE THE FACT THAT WHEN MR. BALWANI LEFT  
04:13PM 3 THERANOS, THERE WAS \$351 MILLION IN THE BANK AND INTELLECTUAL  
04:13PM 4 PROPERTY ASSETS WHEN HE LEFT;

04:13PM 5 AND THEY CAN'T CHANGE THE FACT THAT MR. BALWANI NEVER SOLD  
04:13PM 6 A SINGLE SHARE OF STOCK AT ANY TIME.

04:13PM 7 NOW, DURING ITS CLOSING THE GOVERNMENT DOUBLE DOWNED ON  
04:13PM 8 SHOWING YOU ONLY A SMALL PART OF THE STORY.

04:13PM 9 ONE OF THE REASONS THAT MY CLOSING TOOK SEVERAL DAYS HERE  
04:14PM 10 IS BECAUSE WE HAD TO SHOW YOU ALL OF THE EVIDENCE THAT THE  
04:14PM 11 GOVERNMENT DIDN'T AND GO THROUGH IT.

04:14PM 12 FORTUNATELY, IN OUR SYSTEM, WHEN THE FEDERAL GOVERNMENT  
04:14PM 13 BRINGS ITS AWESOME POWER TO BEAR TO PROSECUTE AN INDIVIDUAL  
04:14PM 14 CITIZEN, IT'S YOU THE JURY WHO GETS TO DECIDE WHETHER THE  
04:14PM 15 GOVERNMENT HAS PROVEN ITS CASE BEYOND A REASONABLE DOUBT.

04:14PM 16 AND YOU HAVE THIS CRUCIAL ROLE TO STAND BETWEEN THE  
04:14PM 17 AWESOME POWER OF THE FEDERAL GOVERNMENT AND AN INDIVIDUAL LIKE  
04:14PM 18 MR. BALWANI. IT IS A WEIGHTY RESPONSIBILITY.

04:14PM 19 BUT YOU HAVE AN OPPORTUNITY HERE. YOU CAN HOLD YOUR HEAD  
04:14PM 20 HIGH AND YOU CAN TELL THE FEDERAL GOVERNMENT THAT IF IT CHOOSES  
04:14PM 21 TO PROSECUTE SOMEONE LIKE MR. BALWANI, IT CAN'T GET AWAY WITH  
04:14PM 22 BRINGING AN INCOMPLETE AND MISLEADING CASE; PRETENDING TO BE  
04:14PM 23 SURPRISED ABOUT THE EXISTENCE OF A TAPE RECORDING OF THE ACTUAL  
04:14PM 24 WORDS THAT ELIZABETH HOLMES SPOKE AND THEN NOT PLAYING IT;  
04:14PM 25 PUTTING SOMEONE LIKE DR. PANDORI ON THE STAND WHO REPEATEDLY

04:14PM 1 LIED, IGNORING FACTS, FOR EXAMPLE, DR. ROSENDORFF'S APPROVAL OF  
04:15PM 2 THE RESUMPTION OF HCG TESTING ON THE EDISON; NOT SHOWING YOU  
04:15PM 3 ALL OF THE EMAILS ABOUT WHAT INVESTORS REALLY KNEW AND THOUGHT  
04:15PM 4 LIKE PFM; NOT SHOWING YOU THE REAL TRUTH OF THE WALGREENS  
04:15PM 5 RELATIONSHIP; ITS USE AND EXPERIENCE WITH THE EDISON AND THE  
04:15PM 6 JOHNS HOPKINS EVALUATION; AND DECIDING NOT TO GET THE CRUCIAL  
04:15PM 7 LABORATORY INFORMATION SYSTEM DATABASE WITH ALL OF THE PATIENT  
04:15PM 8 TESTING DATA, ALL OF THE QUALITY CONTROL DATA, AND INSTEAD TRY  
04:15PM 9 TO PROVE THIS CASE WITH ANECDOTES FROM A HANDFUL OF WITNESSES.

04:15PM 10 WE THE DEFENSE HAD TO SHOW YOU THE TRUTH WHERE THE  
04:15PM 11 GOVERNMENT DID NOT.

04:15PM 12 IN MR. SCHENK'S CLOSING REMARKS HE SAID, AND I'M QUOTING,  
04:15PM 13 "TRUTH IS FATAL TO FRAUD." TRUTH IS FATAL TO THIS PROSECUTION  
04:15PM 14 OF MR. BALWANI.

04:15PM 15 I REALLY APPRECIATE YOUR ATTENTION OVER THE DAYS I'VE BEEN  
04:16PM 16 TALKING TO YOU. I'VE SEEN A LOT OF PEOPLE TAKING NOTES. IT'S  
04:16PM 17 A HARD THING TO DO, AND I DEEPLY APPRECIATE, AS DOES  
04:16PM 18 MR. BALWANI, YOUR CAREFUL ATTENTION NOT ONLY DURING MY CLOSING  
04:16PM 19 REMARKS BUT DURING THE WHOLE MONTH LONG PROCESS OF THIS TRIAL.

04:16PM 20 AS I SAID, I'M NOT GOING TO HAVE THE OPPORTUNITY TO TALK  
04:16PM 21 TO YOU AGAIN OR GET A FURTHER REBUTTAL CLOSING.

04:16PM 22 BUT WHEN YOU'RE LISTENING TO THE GOVERNMENT'S REBUTTAL AND  
04:16PM 23 WHEN YOU'RE IN THE JURY DELIBERATING, PLEASE REMEMBER THAT EVEN  
04:16PM 24 IF THEIR NARRATIVE SOUNDS TIDY AND NEAT, THE CONTEMPORANEOUS  
04:16PM 25 DOCUMENTS IN THIS CASE, THEY DON'T LIE, THE DOCUMENTS DON'T

04:16PM 1 EXAGGERATE, AND THEY DON'T HAVE HUMAN MOTIVATION.

04:16PM 2 IF YOU TAKE A HARD LOOK AT ALL OF THE EVIDENCE AND YOU  
04:16PM 3 LOOK AT THEM THROUGH SUNNY BALWANI'S EYES, NOT WITH THE BENEFIT  
04:16PM 4 OF HINDSIGHT, THE ONLY VERDICT SUPPORTED BY THE EVIDENCE AND  
04:16PM 5 THE LACK OF EVIDENCE IS NOT GUILTY ON ALL COUNTS OF THE  
04:16PM 6 INDICTMENT.

04:16PM 7 THANK YOU VERY MUCH.

04:16PM 8 THE COURT: THANK YOU, COUNSEL.

04:16PM 9 LET ME TURN TO THE GOVERNMENT. WILL THE GOVERNMENT HAVE A  
04:17PM 10 REBUTTAL ARGUMENT?

04:17PM 11 MR. BOSTIC: WE WILL, YOUR HONOR.

04:17PM 12 THE COURT: WILL YOU BE ABLE TO COMPLETE YOUR  
04:17PM 13 ARGUMENT WITH THE TIME WE HAVE LEFT IN THE DAY?

04:17PM 14 MR. BOSTIC: NO, YOUR HONOR. WE ARE PREPARED TO  
04:17PM 15 BEGIN TODAY IF THE COURT WISHES. IF WE BEGIN TOMORROW MORNING,  
04:17PM 16 I'M CONFIDENT THAT WE CAN GET IT DONE IN THE FIRST HALF OF THE  
04:17PM 17 DAY.

04:17PM 18 THE COURT: ALL RIGHT. THANK YOU.

04:17PM 19 LET'S -- LADIES AND GENTLEMEN, WE'VE HAD A LONG DAY TODAY.  
04:17PM 20 I TOLD YOU -- I THINK I ASKED YOU TO PERHAPS GO UNTIL 5:00, BUT  
04:17PM 21 IT'S ABOUT A QUARTER PAST 4:00. WE TYPICALLY BREAK AT 4:00.  
04:17PM 22 SO LET'S TAKE OUR EVENING RECESS NOW. WE'LL START AT  
04:17PM 23 9:00 A.M., 9:00 A.M. TOMORROW.

04:17PM 24 AND LET ME JUST -- I SEE NODS OF APPROVAL, AND I HAVE  
04:17PM 25 APPRECIATE THAT. I APPRECIATE THAT.

04:17PM 1 I THINK A BREAK NOW WOULD BENEFIT EVERYONE TO DIGEST WHAT  
04:17PM 2 YOU'VE HEARD AND ALSO PREPARE FOR TOMORROW.

04:17PM 3 BUT, HOWEVER, DURING THE BREAK, REMEMBER, YOU ARE NOT, YOU  
04:18PM 4 ARE NOT TO DELIBERATE THE CASE IN ANY WAY OR REACH ANY  
04:18PM 5 CONCLUSION DURING THIS BREAK AT ALL.

04:18PM 6 YOUR DELIBERATIONS AND YOUR THOUGHTS ABOUT THE EVIDENCE IN  
04:18PM 7 THIS CASE AND WHAT IT PROVES WILL NOT BEGIN AND SHOULD NOT  
04:18PM 8 BEGIN, YOU SHOULD NOT EVEN BEGIN THINKING ABOUT THAT UNTIL,  
04:18PM 9 UNTIL YOU HAVE HEARD THE REBUTTAL, AND UNTIL YOU HAVE HEARD MY  
04:18PM 10 INSTRUCTIONS, AND UNTIL, ONLY UNTIL YOU HAVE THEN BEEN  
04:18PM 11 CONSIGNED OR ASSIGNED RATHER TO THE JURY DELIBERATION ROOM  
04:18PM 12 WHERE THERE YOU MAY THEN BEGIN YOUR DELIBERATIONS AND YOUR  
04:18PM 13 THOUGHTS ABOUT THE EVIDENCE IN THIS CASE. NOT BEFORE.

04:18PM 14 ALSO, LET ME REMIND YOU OF THE ADMONITION AGAIN. PLEASE  
04:18PM 15 DO NOT LEARN OR ATTEMPT TO LEARN ANYTHING ABOUT THIS CASE, TO  
04:18PM 16 WATCH, LISTEN, OR DISCUSS THIS CASE IN ANY MANNER AT ALL.

04:18PM 17 WE WILL SEE YOU TOMORROW AT 9:00 O'CLOCK.

04:18PM 18 COUNSEL?

04:18PM 19 MR. BOSTIC: YES, YOUR HONOR.

04:18PM 20 MR. COOPERSMITH: YES, YOUR HONOR.

04:18PM 21 THE COURT: 9:00 O'CLOCK TOMORROW. IF YOU WOULD  
04:19PM 22 COLLECT YOURSELVES SUCH THAT WE CAN BEGIN AT 9:00 O'CLOCK. MY  
04:19PM 23 SENSE IS THAT ACCORDING TO THE GOVERNMENT, THEIR REBUTTAL  
04:19PM 24 SHOULD ALLOW US TO HAVE ME INSTRUCT YOU AND I THINK  
04:19PM 25 DELIBERATIONS CAN BEGIN EARLY AFTERNOON. SO THAT'S MY SENSE.

04:19PM 1 SO HAVE A GOOD EVENING. THANK YOU.

04:19PM 2 (JURY OUT AT 4:19 P.M.)

04:19PM 3 THE COURT: PLEASE BE SEATED. THANK YOU.

04:19PM 4 THE RECORD SHOULD REFLECT THAT OUR JURY HAS LEFT FOR THE  
04:19PM 5 DAY. IT'S 4:20 IN THE AFTERNOON.

04:19PM 6 ANYTHING FURTHER BEFORE WE BREAK.

04:19PM 7 MR. SCHENK: NO, YOUR HONOR. THANK YOU.

04:20PM 8 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

04:20PM 9 THE COURT: ALL RIGHT. THANK YOU. HAVE A GOOD  
04:20PM 10 EVENING.

04:20PM 11 MR. COOPERSMITH: YOU TOO, YOUR HONOR.

04:20PM 12 (COURT ADJOURNED AT 4:20 P.M.)

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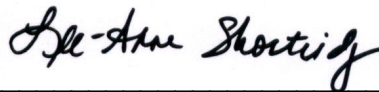
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: JUNE 23, 2022